

EXHIBIT B

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF FLORIDA
3 SAVANNAH DIVISION
4 -----§
5 SOLOMAN OLUDAMISI AJIBADE and §
6 ADENIKE HANNA AJIBADE, as natural §
7 parents of Mathew Ajibade, and §
8 THE ESTATE OF MATHEW AJIBADE and § Case No.
9 Chris Oladapo, its Executor, § 4:16-CV-82-WTM-GRS
10 §
11 Plaintiffs, §
12 vs. §
13 §
14 §
15 JOHN WILCHER, in his official §
16 capacity as Chatham County §
17 Sheriff, CORIZON HEALTH, INC.; §
18 CORIZON, LLC; GREGORY BROWN; BURT §
19 AMBROSE; FREDERICK BURKE; ABRAM §
20 BURNS; MARK CAPERS; MAXINE EVANS; §
21 ANDREUX EVANS-MARTINEZ; PAUL §
22 FOLSOME; DEBRA JOHNSON; JASON §
23 KENNEY; CHRISTOPHER REE; ERIC §
24 VINSON; and BENJAMIN WEBSTER, §
25 Defendants. §

15 -----
16 DEPOSITION OF
17 DARRELL ROSS, PhD
18
19 Valdosta, Georgia
20 Friday, September 22, 2017
21
22 GOLKOW LITIGATION SERVICES
23 Tami Cline, RMR, CRR, FPR
24 877.370.3377 ph | 917.591.5672 fax
25 deps@golkow.com

1 September 22, 2017

2 9:53 a.m.

3

4

5 Deposition of DARRELL ROSS, PhD, held at
6 Coleman Talley, LLP, 910 North Patterson Street,
7 Valdosta, Georgia 31601, commencing at 9:53 a.m.,
8 on the above date, before Tami Cline, Registered
9 Merit Reporter, Certified Realtime Reporter, and
10 Florida Professional Reporter.

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 APPEARANCES:
2 DUFFY & FEEMSTER, LLC
BY: CAMERON C. KUHLMAN, ESQ.
3 Attorneys at Law
236 East Oglethorpe Avenue
4 Savannah, Georgia 31401
912-236-6311
5 Cck@duffyfeemster.com
Representing Plaintiffs
6
LEVIN, PAPANTONIO, THOMAS, MITCHELL,
7 RAFFERTY & PROCTOR, PA
BY: WILLIAM F. CASH III, ESQ. (VIA TELEPHONE)
8 Attorneys at Law
316 South Baylen Street
9 Suite 600
Pensacola, Florida 32502
10 850-435-7000
Bcash@levinlaw.com
11 Representing Plaintiffs
12 CARLOCK, COPELAND & STAIR, LLP
BY: ERIC J. FRISCH, ESQ. (VIA TELEPHONE)
13 Attorneys at Law
191 Peachtree Street NE
14 Suite 3600
Atlanta, Georgia 30303-1740
15 404-522-8220
Efrisch@carlockcopeland.com
16 Representing Defendants Corizon Health and
Gregory Brown
17
GILLEN, WITHERS & LAKE, LLC
18 BY: THOMAS A. WITHERS, ESQ. (VIA TELEPHONE)
Attorneys at Law
19 8 East Liberty
Savannah, Georgia 31401
20 912-447-8400
Twithers@gwllawfirm.com
21 Representing Defendants Corizon Health and
Gregory Brown
22
23
24
25

1 APPEARANCES:

2 OLIVER MANER, LLP

BY: BENJAMIN M. PERKINS, ESQ.

3 Attorneys at Law

218 West State Street

4 Savannah, Georgia 31412

912-236-3311

5 Bperkins@olivermaner.com

Representing Defendants John Wilcher, in his
6 official capacity as Chatham County Sheriff;

Andreux Evans-Martinez; and Debra Johnson

7

8 ALSO PRESENT:

9 Austin Ellis

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

- - -
I N D E X
- - -

Testimony of: DARRELL ROSS, PhD

DIRECT EXAMINATION BY MR. KUHLMAN.....	9
--	---

E X H I B I T S
(Attached)

ROSS EXHIBIT	PAGE
Exhibit 1 Article titled "Safety and Injury Profile of Conducted Electrical Weapons Used by Law Enforcement Officers Against Criminal Suspects"	94
Exhibit 2 Article titled "Electronic Control Device Exposure: A Review of Morbidity and Mortality"	102
Exhibit 3 Article titled "Police Use of Force and Officer Injuries: Comparing Conducted Energy Devices (CEDs) to Hands- and Weapon-Based Tactics"	104
Exhibit 4 Article titled "Can TASER Electronic Control Devices Cause Cardiac Arrest? by Mark W. Kroll, PhD, et al.	112

1	E X H I B I T S		
2	(Attached)		
3	ROSS EXHIBIT		PAGE
4	Exhibit 5	Article Titled "Can TASER Electronic	114
5		Control Devices Cause Cardiac	
6		Arrest?" by Douglas P. Zipes, MD	
7	Exhibit 6	Chapter 12, Administrative	144
8		Implications, from book "Sudden	
9		Deaths in Custody," was marked for	
10		identification.)	
11	Exhibit 7	Chapter 9, Case Analysis of Restraint	164
12		Deaths in Law Enforcement and	
13		Corrections, from book "Forensic	
14		Science and Medicine: Sudden Deaths	
15		in Custody," was marked for	
16		identification.)	
17	Exhibit 8	Preliminary Opinions Report of	182
18		Darrell Ross in Marmelshtein v City	
19		of Southfield	
20	Exhibit 9	Case Law Westfield v Kalamazoo County	184
21		and Mike Stadel	
22	Exhibit 10	Preliminary Opinions of Darrell Ross,	186
23		PhD, in Jennings v Genesee County, et	
24		al.	
25			

1	E X H I B I T S		
2	(Attached)		
3	ROSS EXHIBIT		PAGE
4	Exhibit 11	Preliminary Opinions of Darrell	188
5		Ross, PhD, in Johnson v Kent	
6		County, et al.	
7	Exhibit 12	Expert Witness Disclosure of	228
8		Darrell C. Ross, PhD	
9	Exhibit 13	Article titled "Examining Kingsley	240
10		v Hendrickson: Ending the	
11		Twilight Zone"	
12	Exhibit 14	1/09/15 Memo Regarding TASER Usage	250
13			
14	(PREVIOUSLY MARKED IN PREVIOUS DISCOVERY)		
15	Exhibit P-9	Procedures for Use of the	197
16		Restraint Chair, Bates No. PA00595	
17		- 00597	
18	Exhibit P-88	Uses of TASERs on Restrained	241
19		Detainees Spreadsheet	
20	Joint	Chatham County Policies and	189
21	Exhibit J-2	Procedures	
22			
23			
24			
25			

1

- - -

2

THE COURT REPORTER: Would you raise your
3 right hand, please.

4

Do you swear or affirm the testimony you give
5 in this cause will be the truth, the whole truth
6 and nothing but the truth?

7

THE WITNESS: I do.

8

MR. KUHLMAN: Thank you. Good morning.

9

THE WITNESS: Good morning.

10

MR. KUHLMAN: This will be the deposition of
11 Dr. Ross taken in the Ajibade, et al., vs Wilcher,
12 et al., case. We'll take this pursuant to the
13 Federal Rules of Civil Procedure. I'm Cameron
14 Kuhlman. I'm here on behalf of all plaintiffs.
15 And we have also with us Mr. Cash, Bill Cash, on
16 the phone also on behalf of all plaintiffs.

17

I would just ask the other lawyers here to
18 identify themselves for the purposes of the
19 record.

20

MR. PERKINS: Ben Perkins for the sheriff,
21 Debra Johnson and Andreux Evans-Martinez.

22

MR. FRISCH: Eric Frisch and Tom Withers for
23 Corizon Health and Greg Brown.

24

MR. KUHLMAN: Thank you.

25

- - -

1 DARRELL ROSS, PhD, called as a witness by the
2 Plaintiff, having been first duly sworn, testified
3 as follows:

4 DIRECT EXAMINATION

5 BY MR. KUHLMAN:

6 Q. Good morning again, Dr. Ross.

7 A. Good morning.

8 Q. You and I haven't met before we just
9 introduced ourselves out here in the hall; is that
10 correct?

11 A. That's correct.

12 Q. Okay. I will endeavor throughout today to
13 ask you questions as clearly as I can. My wife
14 tells me I have an issue with enunciation, so if you
15 don't understand a question that I have or need some
16 additional -- ask me to repeat it. Just say so and
17 I'll try to restate the question as clearly as
18 possible.

19 A. Sure.

20 Q. How many times in the last six months have
21 you given a deposition?

22 A. None.

23 Q. How many times in the last six months have
24 you appeared at trial, provided testimony in a trial
25 setting?

1 A. Last time I testified in trial would have
2 been February. So that's roughly -- more than six
3 months.

4 Q. Okay. And when was the last time that you
5 gave a deposition; do you recall?

6 A. It would have been January of this year. It
7 was live testimony. It was trial testimony
8 vis-à-vis video and telephonic conference that was
9 shown later in trial, and that would have been
10 January of this year.

11 Q. Okay. And which of the cases that you
12 disclosed to us as cases that you provided either a
13 report, deposition or trial testimony was that case?

14 A. The January case?

15 Q. Yes, sir.

16 A. Okay. That would be -- hang on. That would
17 have been Number 26, Dawson vs Southfield, et al.,
18 lethal force case in federal court in Michigan.

19 Q. Was that a corrections case or --

20 A. No.

21 Q. -- a law enforcement case?

22 A. A law enforcement case.

23 Q. Okay. Of the -- I notice on your list 1
24 through 37 -- is that a -- is that the complete list
25 from the last four years, or do you need to make any

1 amendments to that list today?

2 A. There should be one more that I omitted that
3 I wrote a report for. I believe it's King vs
4 Rivera.

5 Q. K-e-e-n?

6 A. K-i-n-g, King vs Rivera, Battle Creek,
7 Michigan police department in Michigan. That would
8 have been, I think, March or April of this year. It
9 was a lethal force case.

10 Q. Again, a law enforcement case?

11 A. Law enforcement case, correct.

12 Q. All right. So of the 38 or so cases you have
13 identified, the 37 printed and the one extra that
14 you just told us about, I see that you have got your
15 list organized by case, topic, state and court, and
16 I appreciate that helpful description, including the
17 case numbers. That is exceedingly helpful to us.
18 Can you tell me of those 38 approximately how many
19 of those were law enforcement cases versus
20 corrections cases? Do you understand the
21 distinction I'm drawing?

22 A. Oh, yeah.

23 Q. Okay.

24 A. It will take me some time. Do you want me to
25 go through each one and tell you?

1 Q. Yeah. That would be great.

2 A. The first one was law enforcement.

3 The second one, as indicated, jail death.

4 That was in the jail, corrections.

5 The third one, Grabow, that was a detainee

6 suicide in the jail.

7 The fourth one is a jail use-of-force case.

8 Marmishtien is a law enforcement case.

9 Edgeron is a law enforcement case.

10 Lamley is a law enforcement case.

11 Number 8, Westfield, I believe was a jail

12 use-of-force case.

13 Nine is a jail case, corrections case.

14 Khun is a jail case.

15 Kulpa is a jail case.

16 Twelve, Theoharis is a law enforcement case.

17 Thirteen is a jail case.

18 Fourteen, Ligon, is a law enforcement case.

19 Fifteen is a law enforcement case.

20 Fifteen is a law enforcement case.

21 Q. Is that 16?

22 A. Excuse me. Sixteen. Yes.

23 Q. Thank you.

24 A. Seventeen, Gorrola, is a law enforcement

25 case.

1 Eighteen is a jail corrections-related case.
2 Fleisher is a law enforcement case.
3 Love is a jail case, 20.
4 Twenty-one, Brown, is a law enforcement case.
5 Twenty-two is a law enforcement case.
6 Twenty-three is a jail corrections case.
7 Twenty-four, it's a quasi-law
8 enforcement/jail case, Johnson.

9 Q. Can you just help me -- give me a brief
10 explanation of why it's --

11 A. Well, it was the City -- I think it was the
12 City of Grand Rapids and the Kent County Sheriff's
13 Department arrested the individual. They brought
14 him into the sally port and was right at the sally
15 port where we both had law enforcement and jail
16 officers having to restrain him.

17 Q. Okay. Thank you.

18 A. Yes.

19 Q. Twenty-five?

20 A. Twenty-five, Beard, is a law enforcement
21 case.

22 Twenty-six is a law enforcement case.

23 Twenty-seven is a jail case.

24 Twenty-eight is a jail case.

25 Twenty-nine is a jail case.

1 Thirty is a jail case.

2 Thirty-one is a jail case.

3 Thirty-two is a jail case.

4 Thirty-three was a law enforcement.

5 Thirty-four is a jail case.

6 Thirty-five is a law enforcement case.

7 Thirty-six, law enforcement.

8 Thirty-seven is a jail case.

9 Then the 38th one we mentioned, that was a
10 law enforcement case.

11 Q. Okay. Thank you for providing -- for going
12 through that so thoroughly.

13 Of the -- of the cases that you identified as
14 jail cases, is it -- are all of those cases, as best
15 as you recall, pre-trial detainees? Are any of
16 those -- they're all detention center or jail cases,
17 not prison cases?

18 A. That's correct.

19 Q. Okay. Have in -- is it fair, then, to say
20 that in the 38 cases we have identified, you have
21 not been asked to provide an opinion in a case
22 involving a prison?

23 A. That's correct.

24 Q. Okay. Have you in the course of your career
25 been asked to provide an opinion in a prison case?

1 A. I have.

2 Q. Okay. Do you draw any meaningful distinction
3 between the applicable standards in a jail case and
4 a prison case, particularly as it relates to use of
5 force?

6 A. I do.

7 Q. Okay. I want to ask you a series of
8 questions about this later, but just if you could
9 just help us sort of lay -- get the landscape case
10 here. What is -- are there -- are there ways to
11 identify sort of the broad -- is there a broad
12 distinction between the use-of-force standards
13 applicable in a prison context and in a jail
14 context?

15 A. Yes, there is.

16 Q. Okay. What is one of those distinctions?

17 A. Just one? The status of the detainee and/or
18 the prisoner.

19 Q. Okay. And so what is it about the status of
20 the detainee or the prisoner that changes the
21 applicable standards?

22 A. Pretrial detainee, as you referred to it, is
23 in jail or going through the process of adjudication
24 or even perhaps been convicted but still pending
25 transfer to a prison. So that's a little bit

1 different. As opposed to in a prison where we have
2 a convicted prisoner who's serving time for,
3 generally speaking nationwide, two years or more,
4 has been convicted and is actually incarcerated in a
5 correctional prison facility run by a state or
6 private institution.

7 Q. I appreciate that distinction between the
8 characterization of the classes of individuals that
9 are in custody, those that are in a jail versus
10 those that are in -- folks that have been -- have a
11 conviction and are serving a sentence in a prison.

12 My question, though, was whether or not the
13 way in which the officers approach the use of force,
14 is there a distinction that you -- in your mind
15 between the way an officer in a jail context and an
16 officer in a prison context approaches the standards
17 applicable to the use of force?

18 A. Not really.

19 Q. Okay. Is there a difference in your mind
20 between -- so for our purposes, is it fair to lump
21 the prisoner or the prison context and the jail
22 context together for purposes of the standards
23 applicable for how an officer should or should not
24 use force in those contexts?

25 MR. PERKINS: I'll object to the extent it

1 calls for speculation. Go ahead.

2 BY MR. KUHLMAN:

3 Q. Go ahead and answer.

4 A. Well, when you say "standards" -- and, again,
5 I'm going back to my status of the detainee or the
6 convicted prisoner. The Fourteenth Amendment
7 basically applies to the pretrial detainee in
8 Kingsley v Hendrickson, a recent US Supreme Court
9 case of 2015, versus a convicted prisoner, which we
10 can go back to Hudson v McMillian and other cases
11 that look at more the standard of sadistic and
12 malicious for the purpose of causing harm.

13 So the standards under the amendments would
14 be different, but in terms of a transport wrist
15 lock, it's a transport wrist lock whether I use it
16 in jail or prison, or if I use a neck restraint,
17 it's the same technique, or if I use a TASER in the
18 jail or prison. The evaluation of that in terms of
19 allegations of excessive use of force will be
20 different given the status of that detainee and/or
21 prisoner under those particular standards.

22 Q. Okay. Thank you. I'm trying to make just a
23 more broad distinction so that we can have a
24 conversation about law enforcement on the outside
25 and corrections work on the inside, and so I'm

1 asking you if the distinctions between the work of a
2 corrections officer in a prison and the corrections
3 officer in a detention center or a jail are
4 sufficiently sort of minimal as compared to the
5 distinctions between a corrections officer on the
6 one hand and a law enforcement officer on the
7 outside on the other.

8 MR. PERKINS: Same objection.

9 MR. KUHLMAN: Thank you.

10 THE WITNESS: I'm confused with your question
11 because you have tied duties of a law enforcement
12 officer that, apparently in your question, overlap
13 with a jail detention officer that then overlaps
14 with a prison corrections officer. And those
15 three obviously are not the same in that a law
16 enforcement officer is guided by the Fourth
17 Amendment and does street patrol, where a jail
18 officer doesn't do that, nor does a prison
19 officer, unless there's other distinctions that
20 are different about the prison officer's job that
21 may be doing transport, guarding of -- supervising
22 a prisoner in a court setting, in a hospital
23 setting, in some other treatment type of setting.

24 So there are -- in my mind and in the way as
25 I teach in looking at everything, there is

1 separate distinctive, yet there is some overlap.

2 So that's how I can answer your question the
3 best -- based on my understanding of your
4 question. Now, if you want to break it down a
5 little bit more, I can make perhaps further
6 distinctions or clarifications.

7 BY MR. KUHLMAN:

8 Q. Okay. Are you familiar with a Venn diagram,
9 the idea of a Venn diagram?

10 A. No. You have to educate me on that.

11 Q. Okay. As a much more experienced lawyer in
12 Atlanta once referred it to me as, the two circles
13 chart. So when I say a Venn diagram, I'm referring
14 to essentially two circles that may overlap or don't
15 overlap and then -- so, for example, there may be --
16 there is some area that's common between the two
17 circles.

18 A. Yeah, I'm familiar with that.

19 Q. Okay. Could you -- could you draw for me
20 your understanding of the relationship between law
21 enforcement on the outside, corrections work in the
22 jail and corrections work in a prison in -- can you
23 represent that for me in a model like a Venn
24 diagram?

25 A. When you say "work," are you talking about

1 job duties? Job tasks?

2 Q. No. I'm talking about the standards of
3 the -- the standards of -- as it relates to the use
4 of force by those officers in those three contexts.

5 A. I can't do it in your circles. It would have
6 to be categories that are distinct and separate. So
7 you would have a column for law enforcement that's
8 guided by the Fourth Amendment. Boom.

9 Q. Uh-huh.

10 A. Secondly, you have jail detainees or jail
11 officers that are guided by the Fourteenth
12 Amendment. That standard is somewhat different,
13 although there is some overlay from *Graham v Conner*
14 of the criteria that officers would be examined
15 under excessive force by jail officers.

16 Thirdly, you have another column for the
17 Eighth Amendment, correction/prison officers who are
18 guided by the standards from cases that the Supreme
19 Court has established through the Eighth Amendment.

20 Q. Okay.

21 A. So columns, Eighth Amendment, Fourteenth
22 Amendment, Fourth Amendment.

23 Now, if you're asking me techniques for
24 controlling prisoners or detainees or arrestees,
25 there you could overlap many things. I can use the

1 neck restraint in prison, in jail and on the street,
2 so...

3 Q. Okay.

4 A. So if you're -- again, I'm not quite -- you
5 say standards, but I think you're mixing standards
6 with tasks with responsibilities with -- what I'm
7 trying -- what I hear you say is use-of-force
8 techniques perhaps or -- I'm -- if we're just
9 looking at standards, then are you saying examining
10 excessive force claims under a legal standard?

11 Q. That's not my question. In fact, let me ask
12 you this just now. Do you have any legal training?

13 A. Yes.

14 Q. What is your -- what is the extent of your
15 legal training?

16 A. Undergraduate work, master's graduate level
17 work with criminal law, criminal procedures, civil
18 liability.

19 Q. Okay.

20 A. Postgraduate work. I go to training
21 constantly on legal issues that deal with personnel
22 issues in law enforcement, administrative issues in
23 law enforcement, use-of-force issues in law
24 enforcement, jail legal issues, corrections legal
25 issues taught by bona fide certified attorneys in

1 their field. I attend those quite regularly every
2 year.

3 Q. Okay. Do you intend to express an opinion or
4 present an opinion in this case either now or at
5 trial as it relates to the legal standards
6 applicable in this case?

7 A. Well, other than I have already articulated
8 in my impressions in response to your questions
9 earlier about the appropriate Fourth, Fourteenth and
10 Eighth Amendments, but nothing beyond that.

11 Q. Okay.

12 A. And I have not rendered any other legal
13 opinions in my report, so -- now, I will be
14 responsive to your questions should you ask me.

15 Q. Sure. And I appreciate that. The more that
16 you and I can understand each other, the more
17 efficient we'll be able -- efficiently we'll be
18 able --

19 A. Sure.

20 Q. -- to move through the material.

21 You brought up your undergraduate and your
22 graduate work. Can you tell me a little bit in more
23 detail about your particular educational background
24 starting with your undergraduate experience?

25 A. Yes. I have an associate degree from Lancing

1 Community College in criminal justice, graduating
2 there in '76, 1976. Went on to Michigan State
3 University, obtained an undergraduate degree in
4 criminal justice, Bachelor of Arts in criminal
5 justice at Michigan State and a minor in psychology
6 in 1978. I went on and pursued a graduate degree in
7 criminal justice at Michigan State University,
8 attaining that degree in 1987, and then received my
9 PhD in higher ed administration at Michigan State
10 University in June 1992.

11 Q. Okay. Did you -- can you tell me about
12 the -- your time at the Kennedy School of
13 Government?

14 A. Yes. That's postgraduate work. I spent
15 approximately three to four, five months there on a
16 grant that I received while I was at East Carolina
17 University in Greenville, North Carolina, and went
18 through their Harvard Kennedy School of Government
19 executive leadership program. It was a leadership
20 in management program that looked at all sorts of
21 styles of leadership, theoretical examples of
22 leadership, application of leadership not only into
23 private organizations, public sector, foundations,
24 educational institutions, so forth. So it was a
25 very broad-based program.

1 Q. Okay. Do you recall -- is it fair -- the
2 title of your dissertation was "An Analysis of
3 Citizen Resisting in Policing"; is that correct?

4 A. That's correct.

5 Q. Okay. Do you recall -- I understand it was
6 some years ago, but do you recall the general thesis
7 of your dissertation?

8 A. Yes. It was premised and based on the
9 Supreme Court's decision in *Graham v Conner* which
10 occurred in 1989, and so in looking at the criteria
11 to evaluate the claims of excessive force, I took
12 the claim of actively resisting arrest as one of the
13 factors or criteria that the court would review. I
14 designed an inventory that would specifically
15 analyze the types of resisting officers met in the
16 field during arrest situations, analyzed those and
17 subsequently wrote and finished the dissertation
18 based on those analyzed reports that the officers
19 gave me that looked at the types of resistance they
20 encountered during arrest. And that was the core of
21 that particular research and subsequently related
22 into some training materials and some other
23 publications as a result of that research.

24 Q. So your dissertation did not consider the
25 other two factors in *Graham v Conner*, the flight

1 risk or the severity of the crime alleged?

2 A. Indirectly.

3 Q. Okay.

4 A. But more directly focused on the type of
5 resistance that officers were encountering we're
6 trying to classify or categorize the types of
7 resistance that the officers were facing, because
8 the thesis that I had on the -- or the objective or
9 the purpose, since the Supreme Court had identified
10 various criteria -- and one of the central ones was
11 the type of resistance -- I wanted to focus on that
12 to get a better picture so we could train officers
13 better in justifying use of force based on that
14 criteria.

15 Q. Okay. I think you said that that led to some
16 training materials; is that correct?

17 A. That's correct.

18 Q. Okay. Did your dissertation also sort of
19 lead to or -- and I don't want you to put too much
20 weight on this phrase "lead to." I think you -- I'm
21 asking a general question here about the way -- what
22 other scholarship may have emanated from the
23 interest that you developed in your dissertation.

24 A. Sure. It emanated into a lot actually, but,
25 one -- to answer your question to be responsive, one

1 specific one was the FBI published an article based
2 on that -- and I would have to go back; it's in my
3 CV -- based on the various types of resistance. So
4 I had a publication out of that and in a more formal
5 peer-reviewed journal. There were some others that
6 were not peer reviewed.

7 And it has certainly helped me to promote
8 other research -- it spun off to other research over
9 the years based on that, and then, like I said, in
10 terms of doing a lot of training of officers over
11 the years when I made instructors or instructor
12 trainers in pressure point control tactics or
13 system.

14 Q. What was your first faculty appointment?

15 A. It was at Ferris State University in 1985.

16 Q. Okay. And if memory serves, that puts you
17 pre-doctoral, pre-doc; right?

18 A. Correct.

19 Q. Okay. Even pre -- was that -- your
20 appointment, then, would have been even prior to the
21 completion you have of your master's; correct?

22 A. Yes. And to clarify that, I had been working
23 on the master's degree and had stopped for a period
24 of time and then changed occupations, and one of the
25 things that they requested that I do when I took the

1 position at Ferris, "I want you to complete your
2 master's" -- because I was only like six credits
3 short -- "and then pursue your doctoral degree,"
4 which I did.

5 So I finished within about a year the
6 remaining credits that I was short on for the
7 master's degree or thesis, which is identified in
8 the CV, and then went on and worked full time and
9 finished my PhD in about four and a half years.

10 Q. Were you ABD in four and a half years or you
11 completed -- you completed all of the coursework and
12 dissertation in four and a half years?

13 A. I was ABD in about three, three and a half
14 years.

15 Q. Okay. And then the remaining year, year and
16 a half you spent completing --

17 A. Yeah, about six to eight, nine months.

18 Q. Okay. If we were to go looking for your --
19 either your master's thesis or your dissertation, is
20 that something that you could get for us?

21 A. Sure. But it's also available through
22 microfilm and fiche through University of Michigan
23 systems.

24 Q. Okay. I appreciate that. You mentioned a
25 career change or you said. You were -- did --

1 forgive me if I misstate what you said. You were
2 changing jobs; is that right?

3 A. That's correct.

4 Q. Okay. What was your -- what was your field
5 prior to this change in jobs?

6 A. Just short of 13 years working for the
7 Michigan Department of Corrections. Started out in
8 prison work, did probation work for a while and then
9 was in the state academy, corrections academy for
10 four years as an instructor.

11 Q. Okay. So what was the last year that you
12 were what I think you characterized as -- in your CV
13 as field experience?

14 A. It would have been 1985.

15 Q. Okay. And in those -- for those years that
16 you were working for the Michigan Department of
17 Corrections, how many of those years were in the
18 prison?

19 A. Roughly seven.

20 Q. And what were your responsibilities during
21 that time?

22 A. I started right out -- right out as a basic
23 corrections officer, went through training, and then
24 went through advanced training, worked various
25 custodial assignments within the prison as a

1 corrections officer. As I was finishing -- and I
2 started going to getting my degree at the same time
3 as I was working. Finished a degree and then
4 promoted as a resident unit manager, which is a
5 supervisor of a cellblock of 500 mentally impaired
6 prisoners.

7 I worked in the cellblock as an officer, got
8 the degree or very close to getting the degree, and
9 then they promoted me to the supervisor of the
10 cellblock where I had 16 officers and two assistants
11 and a psychologist, psychiatrist and also overseeing
12 the treatment and programs for the 500 mentally
13 impaired prisoners.

14 Then there came a time as I began to pursue
15 my master's degree I really had an interest in
16 teaching. So I got the master's degree, had a side
17 track curriculum education on CJ education at
18 Michigan State while I was taking my master's, began
19 to teach part time, and that's when I began
20 affiliation with Ferris State University.

21 So there was a point in time there I was --
22 do I want to continue to remain in the Department of
23 Corrections looking in terms of advancement,
24 opportunities for advancement? Or is this really --
25 and I got the opportunity to go into higher

1 education. It's probably the best decision I ever
2 made, other than marrying my wife. But I got that
3 opportunity and left corrections and went into
4 higher ed in '85.

5 Q. Okay. So other than the resident unit
6 manager position that you have just described to me,
7 did you -- and you mentioned advancement. Did
8 you -- did you obtain any higher level of
9 advancement within the Department of Corrections
10 other than that of resident unit manager?

11 A. Well, technically in terms of state
12 classification, yes, as an academy instructor.

13 Q. Okay.

14 A. So -- but we're not talking, you know -- more
15 money obviously, but in terms of grade or pay or
16 classification, it was a little higher than what the
17 unit manager was.

18 Q. As a unit manager, were you ever the watch
19 commander for the facility?

20 A. No. Just for the unit.

21 Q. Right.

22 A. We had 5,500 prisoners locked up in this
23 prison. It was the world's largest walled prison at
24 the time, and I had 500 prisoners locked up in that.
25 It was the largest cellblock in the Michigan penal

1 system at the time. So I was not the watch
2 commander. That would have been the captain and the
3 deputy administrator for -- let me back up.

4 You had -- this prison and many prisons like
5 it were basically broken down and categorized into
6 two kinds of units. You had more treatment units
7 that dealt -- that's what I was, resident unit
8 manager. So we had a deputy warden that I reported
9 to. So he would be in your terms watch commander.
10 He would be responsible for the unit management, the
11 supervision treatment issues. Then we had the
12 custodial aspect. That would be the captain of a
13 particular shift, and that would report to the
14 deputy warden over custody.

15 So you kind of have a bifurcation there of
16 responsibilities. And so even though at first I
17 started out on the custodial side, in order to get
18 promoted, after you got the degree, I went in terms
19 of -- I would supervise custodial officers from the
20 resident unit manager position. That was basically
21 under the deputy warden of treatment.

22 Q. Okay. So -- and -- it --

23 A. If that makes sense.

24 Q. It does make sense. Thank you. These next
25 three questions may sound silly, but I have got to

1 ask them anyway.

2 You never served as a -- you were never the
3 captain --

4 A. No.

5 Q. -- that you have just described?

6 A. But my rank was equal to a captain as unit
7 manager.

8 Q. Okay. But you didn't fulfill the
9 responsibilities that you have just previously
10 described as a captain?

11 A. That's correct.

12 Q. And you never served as a deputy warden?

13 A. No, I have not.

14 Q. Nor as a warden?

15 A. No.

16 Q. Have you been the sheriff?

17 A. No.

18 Q. Okay. Is there any experience beyond 1985
19 where you had -- where you had what you would
20 categorize as field direct experience as you
21 categorized this prior experience?

22 A. No.

23 Q. This experience up to 1985 that we have just
24 been talking about, does that experience in any way
25 inform the opinions you have given in this case?

1 A. Oh, sure.

2 Q. In what way does that experience inform your
3 opinions in this case?

4 A. Correctional practices.

5 Q. Which correctional practices are you
6 specifically referring to?

7 A. The supervision of a jail, supervision of
8 prisoners, use of force of prisoners, classification
9 of prisoners, custodial issues of prisoners,
10 medical/mental health programs, treatment,
11 supervision of prisoners, security and control. I
12 mean, I could go on and on. I mean, there are so
13 many facets that could be covered and addressed. So
14 correctional practices in the operations of a
15 confinement facility whether it's a jail or a
16 prison.

17 Q. Okay. The opinions that you express in this
18 case as to the appropriateness of the policies of
19 the Chatham County Sheriff's Office, is that opinion
20 informed by this experience that you have just
21 described?

22 A. Certainly, as well as other informed things
23 that I have done in my past.

24 Q. I appreciate the additional information.
25 Is your opinion about the use of -- the

1 quantity of or the amount of the TASER that was used
2 at the Chatham County detention center, is that
3 opinion informed by this experience that we have
4 just described?

5 A. That and others, yes.

6 Q. What do you mean by "that and others"?

7 A. Well, understanding how use of force can be
8 used and the reasonableness of use of force given a
9 detainee's behaviors and being trained in the use of
10 the TASER.

11 Q. Okay. Were TASERs in use in the prison that
12 you worked out of up to 1985?

13 A. Not like they are today. We had stun guns
14 but never -- never on the level of technology that
15 are today. Very, very rarely used. It was starting
16 to come in vogue more in the last two or three years
17 as I was leaving the Department of Corrections.

18 Q. Okay. So can you help the jury understand
19 the distinction that you have just drawn between
20 what I call a Taser and what you have referred to as
21 a stun gun?

22 MR. PERKINS: Object to form.

23 THE WITNESS: A stun gun, early on before
24 what we have modern day technology today, was an
25 apparatus -- it would be very -- it would be using

1 a similar like Taser without the probe mode. It
2 would be more of touching like you can do with a
3 drive-stun with a TASER. Totally different type
4 of apparatus but based on -- premised on the same
5 type of technology, touching and having current
6 flow through the body.

7 BY MR. KUHLMAN:

8 Q. Okay. Do you recall the policy which was in
9 place on the unit where you were supervising 500
10 mental health -- individuals suffering from various
11 mental health illnesses in the Michigan Department
12 of Corrections? Do you recall the policy that would
13 have been in place as it relates to the use of the
14 stun gun in that unit in 1985?

15 A. It was not -- yeah. It was not activated
16 then. There was no policy on it because the
17 technology, like I said, came when I was in the
18 academy. So it was not available or not access for
19 the prison at the time that I led the -- was a
20 corrections officer or I was the unit manager. So
21 it was more as I was in the academy and training
22 aspect, instructor in the last two years as I was --
23 so roughly we're saying maybe '81, '82, '83 it
24 started to come into play in some extent, and then I
25 left in '85. So that was well after I was working

1 at the prison.

2 Q. This is when you were in the probation or
3 parole context?

4 A. And then -- yes. Then I moved into the
5 training aspect.

6 Q. Okay. Let's go back to now what you referred
7 to as at least the coequal or maybe just less than
8 the best choice you made in your life, which is --
9 and I'm putting this underneath the decision to
10 marry your wife, the decision to enter the academy.

11 A. No. What I said was the decision to go from
12 practitioner work in corrections to higher education
13 at Ferris State University. So I left the
14 Department of Corrections, went into higher ed.

15 Q. I apologize. When I said the academy, I
16 was -- I use the term "academy" synonymously with
17 higher education, not with the police academy or
18 something like that. I apologize.

19 A. That's a distinct difference, yes.

20 Q. So your decision -- I'm going to ask you a
21 series of questions about your early years in higher
22 education.

23 A. Okay.

24 Q. Okay. Ferris State University was your first
25 appointment; correct? Is that what you told me?

1 A. Correct.

2 Q. Okay. After -- was that a teaching position
3 or research position?

4 A. It was a combination of both. Primarily I
5 was hired to help coordinate a new institute at
6 Ferris State University which provided, for lack of
7 a better word, technical consulting services for
8 criminal justice agencies vis-à-vis training,
9 consultation, research, assessment of policies and
10 procedures, assessment of operational programs at a
11 police department or a corrections department,
12 including jails.

13 I did teach at Ferris and I also taught --
14 and this is the distinction here -- at Ferris that's
15 different than some universities, at least in the
16 criminal justice program. At Ferris they had
17 started in 1972 their baccalaureate degree,
18 four-year degree in criminal justice. At the same
19 time they were certified as a police academy. So
20 students interested in receiving their police
21 training at the same time they're getting their
22 education could not only graduate with a four-year
23 degree, baccalaureate degree, but they were also
24 post-certifiable as a police officer in Michigan.

25 So I taught also in that program, defensive

1 tactics and a series of other courses. So I had a
2 myriad of responsibilities that I was responsible
3 for at Ferris.

4 Q. Okay. And it's correct you left there in
5 1992?

6 A. Correct.

7 Q. Okay. And from Ferris where did you go after
8 that?

9 A. To East Carolina University in Greenville,
10 North Carolina.

11 Q. Okay. And how did your role at East Carolina
12 differ from the conditions -- or the roles that you
13 have just described that you provided at Ferris?

14 A. Sure. It was more academic. It was a
15 10-year tract position, publisher/teaching position
16 in criminal justice. So I was primarily responsible
17 with teaching criminal justice courses and advising
18 students, publishing, researching working on
19 committee work within the university. But at the
20 same time I had the ability and the opportunity to
21 continue to train police officers and corrections
22 officers on the side in PPCT, pressure point control
23 tactics, all over the country doing that as well as
24 in the state for various academies within the state
25 of North Carolina and various agencies within the

1 state, as well as I helped start a 200-hour
2 executive training program for police and
3 correctional executives in the state of North
4 Carolina.

5 Q. Okay. When you said "on the side" just a
6 minute ago, the training that you were doing on the
7 side, was that part of your -- was that within your
8 role as a faculty member, or was that a side
9 business?

10 A. Well, let's go back to your Venn. It kind of
11 overlaps. It was -- we're expected to provide
12 services to your discipline, my discipline being
13 criminal justice. The university did not pay me.
14 That was separate pay and/or -- sometimes it was
15 just service, and we were expected to perform
16 community service as a faculty member at the East
17 Carolina University. But I would say for the most
18 part 70, 80 percent was -- I didn't have a shingle
19 up that says this is my own private business, but I
20 was more of a consultant that did that for pay on
21 numerous occasions.

22 Q. You mean 70, 80 percent of your consulting
23 work, some with the remaining 20 or 30 percent being
24 the charitable work or the community service?

25 A. Correct.

1 Q. Okay.

2 A. Roughly in those percentages.

3 Q. So that's 70, 80 percent of the subset. Of
4 the -- of your time at that time how much -- what
5 percentage of your time did you spend teaching?

6 A. One hundred percent.

7 Q. Well, if --

8 A. I did this during the days that I didn't
9 teach or on the weekends or on holidays or breaks or
10 summers. Sometimes in the summer I had -- we had
11 the option whether we could teach in the summer or
12 not. Sometimes I forewent that and said, well, I
13 can make a little more extra money doing consulting
14 than teaching at the university.

15 Q. Okay. And approximately what percentage of
16 your time did you spend writing during that period?

17 A. Boy, the first -- it hasn't really changed
18 much.

19 Q. Okay.

20 A. That's hard to say. I mean, I have never
21 really sat down and said okay -- I have never broken
22 it, okay, it's 20 percent here and 30 percent. It's
23 part of the total job as a faculty member is to do
24 that. So the days that I wasn't teaching I might be
25 in committee work. I might be in the office

1 writing. I might be at home writing. I might be
2 out consulting. I might be taking a case like we
3 have here today. So it was enough that I got
4 published.

5 Q. Sure.

6 A. But I -- it's hard for me to quantify a
7 percentage of time. I could break it down for you
8 this way, I suppose. At East Carolina University it
9 was expected that probably 40 percent of your time
10 was spent teaching, another probably 40 percent
11 scholarly in professional development, i.e.,
12 researching and publishing, and then the other 20
13 whatever left there percentage-wise would be
14 service, service work.

15 Q. What year did you make tenure?

16 A. I believe it was '98, 1998.

17 Q. Did your publishing calendar increase or
18 decrease after you made tenure?

19 A. It increased.

20 Q. You wrote more after you got tenured?

21 A. Absolutely.

22 Q. Okay. Was there a particular reason why you
23 thought it was time to write more once you made
24 tenure?

25 A. It wasn't an amount of time. It was more

1 opportunity.

2 Q. Okay.

3 A. Because I think what happened was after I
4 had -- did the dissertation -- this is only my
5 assessment. After I did the dissertation, I started
6 to get some publications, and I don't know if the
7 field was really ready to look at more use-of-force
8 issues, but as time grew on and as use of force
9 became more in the domain, in the public eye and in
10 criminal justice as well as law enforcement and so
11 forth, which was my area of expertise more than say
12 not, there was -- it was harder to get published
13 when you're under the clock, to get your name
14 recognized and known, then once you started getting
15 more publications and speaking engagements and
16 training and so forth, because after I got tenure,
17 it seemed like the flood doors just -- opportunities
18 opened then when -- during the time I was trying to
19 get published.

20 Q. Okay.

21 A. So for tenure purposes.

22 Q. Were you -- prior to making tenure, were you
23 in control -- did you have autonomy as far as your
24 research interests or your areas?

25 A. Oh, absolutely.

1 Q. And I assume that this answer would be the
2 same after you were tenured?

3 A. That's correct.

4 Q. Okay. Who were -- can you identify your
5 influences within the academy? And I don't mean the
6 corrections academy. I mean --

7 A. Yeah.

8 Q. -- higher education. Who were your
9 influences that -- who most directly influenced your
10 scholarship?

11 A. Well, the -- I would just say generally the
12 literature, the review of the literature, where it
13 was lacking.

14 Q. Okay.

15 A. Certainly Dr. Robert Parsons at Ferris State.
16 I wouldn't say he directed my scholarship, but he
17 certainly was a mentor in terms of the types of
18 activities that I was doing. I learned that through
19 him when I was at Ferris. But I think more the
20 catalyst for my interest and motivation to write
21 was -- well, let me just back up and say this.

22 At Michigan State we were taught that if you
23 get a PhD, that's your job, is to research, bring
24 new knowledge to the field. Don't rely on someone
25 else to write the book. You should be doing that.

1 And that's at Michigan State. Now, it may be
2 different at other universities. So that's how we
3 were taught and trained.

4 So getting involved with that certainly was
5 motivation, but I think the primary and one of the
6 more prominent emphasis for me was working on cases
7 to see whether there might be problems that needed
8 researched that could be addressing problems in the
9 field through research.

10 Q. When you say cases, do you mean legal
11 disputes or do you mean case studies in the --

12 A. I'm primarily referring to actually working
13 as an expert on a case --

14 Q. Okay.

15 A. -- primarily. But certainly case decisions
16 by the Supreme Court or by a particular circuit, the
17 trends. I have done numerous studies on trends of
18 liability issues, but primarily from working on a
19 case like we're working on here today or we're here
20 for today to see that there may be potential
21 problems that emerge and working with risk managers
22 across the country that have identified problems
23 when they insure police departments or sheriff's
24 departments.

25 So there's really a constellation of

1 variables that really kind of propel me or interest
2 me and motivate me to do research or scholarly work.

3 Q. Is it fair to say there's a major theme in
4 your scholarship over -- beginning with your
5 dissertation and continuing really to the present of
6 taking the developments and the case law, whether
7 it's beginning, as you said earlier, with *Graham v*
8 *Conner* or -- and continuing even up until just, you
9 know, a couple years ago with the *Kingsley* case, is
10 it fair to say that there is this theme going
11 through your scholarship of interpreting
12 use-of-force decisions for law enforcement or
13 corrections officers?

14 A. That would be one theme. I would agree with
15 that.

16 Q. Okay. What is another theme that you could
17 identify in your scholarship?

18 A. Well, from that emanates the other avenues.
19 For example, within the realm of use of force there
20 could be policy-related issues, not just the
21 technique or tactic or a device used.

22 There could be, which I have written on
23 exclusively and studied quite a bit, the whole area
24 of death -- associated deaths from the use of force,
25 either the liability issues of it and/or the

1 etiology of the cause of that particular death, what
2 is the background of a particular -- from a
3 use-of-force situation.

4 Training factors that deal -- training issues
5 that deal with the use of force. What is the best
6 way to address human performance out in the field
7 basically when you're in a dynamic scenario using
8 force with someone who is trying to harm, injure or
9 kill you.

10 So it goes from policy to training to
11 liability issues to training issues to technique
12 issues, application issues. But I -- much of the
13 core happens to be around, wrapped around, I think,
14 liability but from a broader perspective how then we
15 operationalize that back into a particular
16 department. So I -- investigation has become an
17 area that I have -- we just published a book just in
18 July in how investigating an officer-related
19 shooting or arrest-related death or a custodial
20 death in jail.

21 So to try to answer your question more
22 succinctly, it would be working as an expert --
23 hired as an expert, retained as an expert to work in
24 a particular case and a topic that I see potential
25 issues that deserve greater research. That's where

1 I'm probably getting the most of my ideas or
2 motivation to research.

3 Q. Okay. So when you say "operationalized
4 liability," you mean that operationalize those
5 liability decisions for law enforcement or for
6 corrections officers?

7 A. Yes. Practitioners just do not take time --
8 they don't have the time to sit down and study law
9 decisions unless they go to an annual training, and
10 there they may just get a synopsis of a particular
11 case, a Supreme Court case, or let's say --
12 depending on what agency they're with. But this
13 is -- I eat and breathe this stuff. So when someone
14 were to say, "I want you to come and give us
15 training on this," this is what I -- I work at the
16 university and I come home and read cases, work on
17 cases and testify and publish. So this is -- I
18 don't have much free time, but this is what I do.
19 People look at this and say this is crazy, but this
20 is what I do, so...

21 Q. Sure.

22 A. Then I get to share that with them because I
23 know practitioners aren't taking the time. Even my
24 students, they're just like holy cow, grad students
25 I teach in civil liability. We learn more in the

1 class than just by just -- just from reading a case.
2 What is the implication? What's the application?
3 What does this mean to a police officer arresting
4 someone when the court says we're going to examine
5 you and to review your use of force based on these
6 standards and the totality, what happened in the
7 jail or the prison or the street.

8 Q. What were -- do you recall what year you
9 first provided an expert opinion in a civil dispute?

10 A. I do. 1989, October 1989 in federal court in
11 Marquette, Michigan. It was during the World Series
12 when we had an earthquake in San Francisco.

13 Q. I remember that earthquake. I wasn't there,
14 but I was --

15 A. I wasn't either.

16 Q. -- watching on TV and distinctly watching the
17 bridge go like this and wondering what does this
18 mean.

19 A. Yeah.

20 Q. Do you -- in the time -- in the 28 years or
21 so since then, has your work as an expert --
22 separate and apart from your academic work, has your
23 work as an expert in these types of cases continued
24 throughout that period?

25 A. Yes.

1 Q. Okay. Has there been a -- how would you --
2 can you draw a line for me to sort of represent the
3 trend of the quantity of work that you did as an
4 expert beginning in 1989 and continuing to today?

5 A. You mean the frequency of retained --
6 retention as an expert?

7 Q. Well, I'm not asking you to tell me how
8 much -- to try and remember every single case that
9 you've been in. I'm asking you whether if in 1989
10 there was one case and then --

11 A. Yeah, frequency.

12 Q. Sure. Frequency. Yeah.

13 A. Yeah.

14 Q. Could you draw that for me beginning in '89
15 and continuing?

16 A. Well, it would be rough.

17 Q. That's fine. We're not doing empirical work
18 here. We're just trying to get our heads around it.

19 A. I would say it started to take off in --
20 that's '89. So '90 -- certainly after I published
21 or did the dissertation. So '93 it began to go
22 more, and it's probably leveled off or even grew a
23 little bit since, you know, '16, '17. I can tell
24 you that probably since about 2000 to the current I
25 get about 10 to 12 cases a year.

1 Q. Okay.

2 A. I'm retained in.

3 Q. And of the cases that you're retained in --

4 A. Roughly. Roughly. Estimate.

5 Q. I'm not -- I'm not trying to hold you --

6 A. Yeah.

7 Q. -- to a number right now. I'm trying to get
8 proportion here.

9 Of the 10 to 12 in which you're retained, can
10 you tell me approximately how many of those you
11 ultimately provide testimony?

12 MR. PERKINS: Trial or deposition?

13 BY MR. KUHLMAN:

14 Q. Well, I can ask the big question or I can ask
15 you to break it up. I want to know -- I think I can
16 ask the --

17 MR. PERKINS: I'm just making it easy.

18 MR. KUHLMAN: Appreciate it. Thank you.

19 THE WITNESS: I can give you a good estimate.
20 I think I have been in live testimony about 200
21 times over the course since about '88. In
22 depositions -- every one of those -- almost every
23 one of those more depositions -- there's more
24 depositions -- I take more depositions obviously
25 than I go out into live testimony.

1 BY MR. KUHLMAN:

2 Q. Sure.

3 A. So roughly speaking about 200 times live
4 testifying in federal court or state court, as the
5 case may be.

6 Q. Okay. And so that's live testimony in court,
7 and you said that the number -- so depositions are
8 going to be higher than that; correct?

9 A. Yeah. Yes.

10 Q. And then providing reports is going to be a
11 number that's even higher than that?

12 A. Because every case since, what, '95/'96 when
13 the rules changed -- it used to be early on you
14 didn't have to write a report, and the rules
15 changed -- I can't remember -- somewhere in the
16 mid '90s. So now every case you get -- unless it
17 settles before you get a chance to put your opinions
18 in writing. So every case that I get since about
19 the mid '90s, with a few exceptions, I write a
20 report.

21 Q. Okay. And of the cases that -- of those
22 cases -- and I want to deal specifically with, say,
23 the period beginning in, let's say, 2012 and
24 carrying forward. What percentage of those cases in
25 rough terms did you either provide a report or --

1 and then ultimately a deposition or perhaps a
2 deposition and maybe even trial? So let's -- I'm
3 dealing with the report, the largest number.

4 A. Since 2012?

5 Q. Yes, sir. What --

6 A. The exact number? I don't know.

7 Q. No. No. I'm trying to ask you the
8 percentage since 2012 of the reports that you have
9 drafted, what percentage of those approximately have
10 been for either law enforcement or corrections
11 agencies or individual officers?

12 A. Roughly estimate 60, 65 percent for law
13 enforcement and the remaining for sheriff's
14 department, the jails.

15 Q. Okay. 65/35?

16 A. Approximately.

17 Q. Okay. I haven't done the math back here
18 on -- when we went through the 38 that you
19 identified, but I'm going to trust for a minute that
20 that number might -- that you might be -- you might
21 have a few more jail cases than 35 percent.

22 A. Yeah. Yeah. I never sat down and quantified
23 it.

24 Q. Okay. In those -- but that 65 and 35, that
25 equals 100 percent; correct?

1 A. Correct.

2 Q. Okay. Have you at any time since 2012
3 testified on behalf of the detainee or the arrestee
4 or the --

5 A. For the plaintiff?

6 Q. Sure.

7 A. No.

8 Q. Okay. Have you -- in those -- beginning in
9 2012 to coming to today, have you ever found that --
10 a constitutional violation by a law enforcement
11 officer or a corrections officer, in your report?

12 A. Not in my report. Now, I want to make a
13 distinction. I have been called on cases during
14 that time period where the defense had called me and
15 I said, "I declined the case because I don't think
16 you have a case. You don't want me to testify in
17 the case." So I have declined the case based on
18 what I have formed an opinion that it was not proper
19 conduct, so I decline the case.

20 Q. Okay. Earlier you told me that you take 10
21 or 12 cases a year.

22 A. Roughly, yeah.

23 Q. Approximately how many do you decline?

24 A. Boy, I never put a figure on it. Probably
25 four or five a year.

1 Q. Okay. And are you ever called by plaintiffs?

2 A. No.

3 Q. If you were called by a plaintiff, would you
4 accept a case?

5 A. Depends.

6 Q. What would be the factors that you would
7 consider if you were called by a plaintiff in
8 terms --

9 A. Let me just -- are you talking in 2012 to
10 current or ever?

11 Q. Well, Mr. Perkins is going to ask me to ask
12 you from 2012 to current.

13 A. Okay.

14 Q. But I would love if you could answer the
15 question from since 1989.

16 MR. KUHLMAN: Do you want to object to that
17 or --

18 MR. PERKINS: Object to form. Go ahead.

19 BY MR. KUHLMAN:

20 Q. Okay.

21 A. Very rarely have I ever got called by a
22 plaintiff's attorney. I have taken two in my whole
23 entire life career as an expert.

24 Q. Okay.

25 A. One in 1999 or 2000 and one in '97. The one

1 in '97 was -- and I don't remember the case, parties
2 in the case, but it dealt with a hogtied situation
3 where a subject died in police custody and he was
4 hogtied with jumper cables, and my impression was
5 that that was totally inappropriate. I don't mind
6 hogtying. It's just the apparatus and training
7 issues. So that I wrote a report, and they settled
8 that case out of court.

9 The second one would have been
10 around '99/2000, and I'm giving an estimate. These
11 were plaintiff cases where in Mississippi the motor
12 carrier division which stops trucks on the road and
13 so forth --

14 Q. Weigh masters?

15 A. Correct. Totally misused/abused their use of
16 force and authority on an arrest in a detainment of
17 a trucker, a driver. And I wrote a report in that,
18 and they settled that case. But those -- those are
19 the only two cases. Since that time I have not got
20 called.

21 Q. Okay. So as -- just to clarify, in that
22 hogtying case that you just mentioned, the earlier
23 case, your problem in that case was not with the
24 hogtying. It was that they used jumper cables
25 instead of --

1 A. Correct.

2 Q. Well --

3 A. And there was lying that was going on and
4 deceit by the officers.

5 Q. So you had a problem in that case because
6 there was lying and deceit by the officers?

7 A. Yes. It was unprofessional conduct.

8 Q. What in particular about the conduct? Was
9 it -- was there more things that -- were there --
10 was there more conduct that you found unprofessional
11 other than the lying and the deceit?

12 A. No. Other than just the department was just
13 totally unprepared to deal with that kind of -- in
14 terms of training and techniques and equipment when
15 the person was high on cocaine, had about 2.5 grams
16 of cocaine in his system, which is something they
17 should be prepared at least to deal with from a more
18 professional and appropriate standard technique.

19 Q. Okay.

20 A. Other than that, that would be it.

21 Q. Okay. It's -- so it's correct that with the
22 exception of those two cases, you have never
23 expressed an opinion that a police officer has acted
24 wrongfully?

25 A. No, not in terms of an expert witness case.

1 Q. Okay. Have you ever testified that a
2 corrections officer acted wrongfully, with the
3 exception of those two cases?

4 A. No.

5 Q. Going back to 1989?

6 A. Correct.

7 Q. Have you ever found -- expressed an opinion
8 in a report or through testimony prior to the date
9 at which the rules were amended and you were --
10 didn't have to provide a report that an officer,
11 whether that's a corrections officer or a police
12 officer, violated someone's constitutional rights,
13 with the exception of these two cases?

14 A. No.

15 Q. Have you ever found beginning in 1989 and
16 continuing to the present, with the exception of
17 these two cases, that an officer's use of force was
18 excessive?

19 A. No.

20 MR. PERKINS: You said found that a report or
21 just ever?

22 MR. KUHLMAN: Well, I'm trying to account --
23 he's already identified that prior to the change
24 in the rules that there were cases that he
25 expressed opinions in in which he didn't have a

1 written report, and so I'm trying to ask one
2 question that accommodates both the time in which
3 there were reports and a time prior to that in
4 which there weren't reports.

5 MR. PERKINS: Did you hear his prior
6 question?

7 THE WITNESS: Yeah. Repeat that again.

8 BY MR. KUHLMAN:

9 Q. Okay.

10 A. Or clarify it.

11 Q. I'll ask two sets of questions then. In the
12 time since the rules were amended to require a
13 written report on behalf of an expert, in the time
14 since then continuing to the present, have you
15 written an opinion or expressed a written opinion in
16 one of those reports that the use of force by a
17 corrections officer or a law enforcement officer was
18 excessive, with the exception of these two cases?

19 A. With the exception, no.

20 Q. Okay. In the time period prior, between 1989
21 and the change in the rules in which there was no
22 written report necessarily required, did you express
23 an opinion through testimony either at deposition or
24 trial in one of those cases that an officer, a
25 corrections officer or a law enforcement officer,

1 used force that was excessive?

2 A. No.

3 Q. We've been going about an hour or so here. I
4 know we don't have a videotape to change, but would
5 you like to take a break or do you need -- would you
6 like to continue?

7 A. I could use a break.

8 MR. KUHLMAN: Okay.

9 (A recess was taken from 10:56 a.m. until
10 11:04 a.m.)

11 MR. KUHLMAN: We're back on the record.

12 BY MR. KUHLMAN:

13 Q. Dr. Ross, we're back from a short break.
14 Over the break I was thinking about the earthquake
15 in '89, and it made me wonder, when you -- you
16 approach your discipline as an academic, your
17 scholarship, do you write -- is the data that you
18 use primarily empirical data that you gather, or is
19 it more of these case studies that we talked about
20 earlier?

21 A. It's a blend of both. I mean, I do empirical
22 research, original prospective research as well as
23 content analysis research.

24 Q. So I forgot to ask you about leaving East
25 Carolina and where you went after that. What was

1 your next academic appointment?

2 A. From there I was -- I interviewed and got
3 promoted to the director of the law enforcement
4 program at Western Illinois University in 2006.

5 Q. And was that -- was that a training program
6 or who were your students?

7 A. It was a baccalaureate degree program.

8 Q. Okay.

9 A. It was a criminal justice program.

10 Q. Okay.

11 A. We had 2100 students, 1900 on campus and one
12 extension site and 120-plus graduate students at
13 five extension sites in the suburbs of Chicago.

14 Q. And you were the -- you were the director of
15 the program?

16 A. Correct.

17 Q. Okay. Is this -- is this -- is it fair to
18 say there was a trend that you identified earlier as
19 sort of beginning in Ferris or Ferris was one of the
20 early programs to develop this baccalaureate
21 program, the four-year program that would also have
22 the hands-on training component of it to get the
23 postcertification and undergraduate degree together?

24 A. Were you saying is it a trend?

25 Q. Well, how many of these programs exist across

1 the country today?

2 A. Very few. This was pretty unique to
3 Michigan.

4 Q. Okay.

5 A. So I did not -- that's the only one I have
6 ever been affiliated with. None at East Carolina
7 University was a combination of academic and academy
8 or at Western or where I am at presently at Valdosta
9 State.

10 Q. I'm sorry if I misunderstood. There was a
11 baccalaureate program at Western Illinois?

12 A. Yes. I was the director of that program.

13 Q. Okay.

14 A. It was a four-year program with a graduate
15 school in criminal justice.

16 Q. Okay. And the graduates -- after that
17 four-year program, were those graduates also
18 postcertified?

19 A. No.

20 Q. Okay.

21 A. They had to go to an academy wherever they
22 were hired.

23 Q. Okay. Were the majority of the students
24 ultimately sort of bound for law enforcement or
25 corrections work?

1 A. At Western?

2 Q. Yes.

3 A. Yes.

4 Q. Okay. And what about after you came here to
5 Valdosta State?

6 A. What about it?

7 Q. Well, are the -- again, I apologize for an
8 incomplete question.

9 Do you -- the baccalaureate -- there's a
10 four-year baccalaureate program at Western Illinois;
11 correct?

12 A. Yes. And a graduate program, graduate
13 school.

14 Q. And there was also a baccalaureate program at
15 Ferris State?

16 A. Correct.

17 Q. Okay. And it was at Farris State where they
18 had this combined deal where you could come out of
19 that program with a four-year degree and
20 postcertification?

21 A. Yes.

22 Q. Okay. Moving now to Valdosta. Which -- is
23 there a four-year baccalaureate program at Valdosta?

24 A. There's many.

25 Q. Well, is there a -- is there a program

1 similar to the program at Western Illinois?

2 A. Yes. Let me break it down for you.

3 Q. Thank you.

4 A. At Valdosta State I'm the department head of
5 three programs: Sociology, anthropology and
6 criminal justice. A four-year degree. I also am
7 the department head then -- we also have a graduate
8 program in sociology and criminal justice within
9 that. We have about 700 students.

10 Q. That's a master's program?

11 A. Yes.

12 Q. Is there any doctoral program that you
13 supervise now?

14 A. No.

15 Q. Okay. The sociology department, the
16 anthropology department, the criminology department,
17 these are undergraduate majors or programs?

18 A. The sociology and the anthropology are
19 combined as an undergraduate program. Criminal
20 justice is its own separate undergraduate program
21 and the soc has its own graduate program as well as
22 criminal justice.

23 Q. Excuse me for just one moment.

24 Okay. How many -- as a department head, how
25 many additional faculty members do you supervise?

1 A. Eighteen.

2 Q. Across those -- the departments you have just
3 told me about?

4 A. Yes.

5 Q. Okay. Of those 18, how many have -- or have
6 since you received tenure?

7 A. Well, let's see. Roughly -- I have to take
8 each one, but 13 to 14 have -- are either assistant
9 professor, full professor, meaning they have tenure.
10 I have three that are working on tenure. So they
11 have not been promoted yet. And I have three that
12 are not on tenure track. They're lecturers.
13 They're not on the tenure track position.

14 Q. Like an adjunct?

15 A. No.

16 Q. No?

17 A. No. They're full time.

18 Q. Are there any adjunct faculty as well?

19 A. Yes.

20 Q. Okay.

21 A. From time to time -- it just depends on the
22 semester. I'll have four or five in sociology and
23 another three or four in criminal justice. Just --
24 but it varies.

25 Q. Okay. Are the two lecturers writing?

1 A. No. They're not required.

2 Q. Okay. Are you supervising anyone's writing
3 or scholarship right now?

4 A. Doctoral students I am. Not faculty.

5 Q. Okay.

6 A. When you say supervising, do you mean I'm
7 mentoring them how to write and research an article
8 or a topic?

9 Q. I'm -- well, my question is both really. I'm
10 not asking you whether you're -- well, I will ask
11 you this first: Are you on committee -- how many --
12 are you the paper committee member for a number of
13 doctoral students?

14 A. Yes, I am.

15 Q. Okay. Approximately how many doctoral
16 students?

17 A. Five.

18 Q. Okay. Of the -- of the faculty members that
19 are tenure track right now, are those faculty
20 members also conducting research and publishing
21 right now?

22 A. Yes.

23 Q. Okay. Is there anyone within the department
24 who can be fairly characterized as a mentor for
25 those faculty members?

1 A. Not per se, but there's collaboration amongst
2 faculty to do research and to publish and to present
3 at conferences. There's collaboration. I wouldn't
4 say that -- we have 18 to 20 faculty and so forth
5 as -- we don't have an individual, to answer your
6 question, I don't think that oversees that's a
7 mentor for all. It's more a collaboration. They
8 know the expectation. We assist when necessary, if
9 they have questions about research or obtaining a
10 grant or something of that nature, obviously. But I
11 would say it's more collaboration as opposed to the
12 specific term of mentoring.

13 Q. Okay. Of the five doctoral students that
14 you're supervising right now or advising on serving
15 on the committees for, where do you anticipate those
16 five students -- where do you anticipate their
17 placement, ultimate placements?

18 A. You mean in terms of occupation?

19 Q. Uh-huh.

20 MR. PERKINS: Object to form; calls for
21 speculation. Go ahead.

22 THE WITNESS: Probably stay where they're at
23 because they're practitioners in the field already
24 in some aspect of criminal justice.

25 ///

1 BY MR. KUHLMAN:

2 Q. Okay. Are any of them in -- currently
3 practitioners in a corrections environment?

4 A. Yes, they are.

5 Q. How many of the five?

6 A. One.

7 Q. Okay. What is the dissertation topic of that
8 one doctoral student that you have just identified?

9 A. I believe she is looking at -- she's in
10 charge of the Prison Elimination Rape Act for the
11 State of Georgia, so she is in the executive office
12 and executive manager up outside of Atlanta. So
13 she's going to be doing some research in regard to
14 looking at policies and practices of implementing
15 the Prison Elimination Rape Act in Georgia.

16 Q. Okay. Are you assisting her with the
17 research design?

18 A. I have looked at it. I have analyzed it for
19 her and approved it, but she came up with it
20 herself.

21 Q. Okay. Do you consider yourself an expert in
22 research methods?

23 A. Yes. I have taught it for many, many years
24 and done it myself, so yes.

25 Q. Sure. Okay.

1 A. Yeah.

2 Q. And so of your scholarship in, say, the last
3 five years, is -- can you tell me whether or not --
4 well, let's just look at it for a moment.

5 Number 1, if you want to refer to it, this
6 might help us. Number 1 are journal articles on
7 page 5 of your CV. This is reviewing the PLRA;
8 correct?

9 A. Correct.

10 Q. Okay. Is that -- what -- does that -- does
11 that article inform in any way the opinions that you
12 have expressed in this case?

13 A. No.

14 Q. Okay. Can you identify for me out of, say,
15 the first -- let's take them in groups of ten. The
16 first ten articles in your -- on your publications
17 list here -- we'll set the books and monographs
18 aside. I'm talking about journal articles.

19 Of the first ten in the list, are there any
20 of those articles which you can identify as
21 informing or directly related to the opinions that
22 you express in this case?

23 A. Okay. Yeah. Number 3, Number 4, 5, maybe 7.
24 You said -- go through how long?

25 Q. Through 10.

1 A. Roughly maybe -- some aspects of 9 and 10.

2 Q. Okay. You mentioned earlier collaboration
3 with other faculty members within the departments.
4 Do you recall that?

5 A. Yeah.

6 Q. Do you -- did you collaborate with any of
7 your co-faculty members within the departments in
8 either the -- did they review earlier drafts of
9 these -- or coauthor any of these one, two, three,
10 four, five, six articles you have identified?

11 A. Has my faculty reviewed this? No.

12 Q. Do you share drafts within the department,
13 working drafts or working papers?

14 A. No.

15 Q. Do other faculty members share their working
16 papers with you?

17 A. They have.

18 Q. Okay. Would you say it's fair that -- is it
19 fair to say that the other faculty members within
20 the department are aware of your general research
21 interests?

22 A. Yes.

23 Q. Are they aware of your general positions that
24 you take within the papers?

25 A. If they read them.

1 Q. Okay. Do you -- have you --

2 MR. PERKINS: He'll fire them right back to
3 you all day.

4 MR. KUHLMAN: That's fine.

5 BY MR. KUHLMAN:

6 Q. Do your other faculty -- do the other faculty
7 members know you're here today?

8 A. No.

9 Q. Okay. Are they aware of your additional work
10 as an expert?

11 A. Yes.

12 Q. Okay. Are they -- are they generally aware
13 of the positions you take in the cases in which you
14 express opinions?

15 A. I don't know that. I don't share -- this is
16 something that I don't really share with them and
17 don't have an opportunity to, so I doubt it.

18 Q. What percentage of your income in the last
19 four years has been derived from your work as an
20 expert?

21 A. The 30 to 40 percent.

22 Q. And the balance, the 60 to 70 percent comes
23 from your faculty appointments?

24 A. Yes.

25 Q. Does Valdosta State have an institutional

1 review board?

2 A. Yes.

3 Q. Have you submitted any of your scholarship in
4 the last ten years, any of the -- any of your
5 proposed research to the IRB?

6 A. Yes.

7 Q. Okay. Has any of that -- have the -- has the
8 IRB approved all of your proposed projects?

9 A. Yes.

10 Q. Without comment?

11 A. Without comment.

12 Q. Okay. Can you tell me about the most recent
13 piece that you submitted to IRB?

14 A. It would be Number 5.

15 Q. Okay. I'd like to ask you a series of
16 questions about the design of the research that you
17 conducted in order to write Number 5, the article.
18 What was the -- what was the -- what methods did you
19 utilize?

20 A. I use a prospective methodology.

21 Q. And can you help the jury understand what a
22 prospective methodology is?

23 MR. PERKINS: Object to form.

24 THE WITNESS: Sure. It's a methodology that
25 looks at incidents and the nature phenomenon in

1 realtime.

2 BY MR. KUHLMAN:

3 Q. And so do you -- how do you design a sample
4 or how do you determine the sample to be evaluated
5 in realtime in this -- for this piece?

6 A. This particular research involves 17 police
7 departments in the United States and primarily was
8 those that I had done some training for in the past,
9 had some contact there in the past and they agreed
10 to, for a year, document on an instrument that I
11 designed and actually modified from Dr. Christine
12 Hall's research in Canada, with her permission, to
13 look at the violent -- the outcomes of violent
14 arrest situations in placing subjects in the prone
15 restraint position.

16 So every time that an officer had a level of
17 defense of resistance or higher, violent or
18 combative type of resistance, they would fill out
19 the instrument and would submit that to a supervisor
20 who was overseeing collecting of the instruments at
21 that agency. At the end of the year, they sent me
22 the instruments that were collected for that agency.
23 And I had a coauthor on that who assisted me in
24 doing -- assisted the stats, the statistical
25 analysis of those, of the data that we received over

1 the year.

2 Q. Okay. And were there significant findings?

3 A. Yes, there was.

4 Q. And what were those findings?

5 A. That on these violent confrontations, every
6 arrestee was placed in the prone position, was
7 handcuffed and/or legs were restrained in many of
8 these. All of them were handcuffed. Many of them
9 were hobbled, that TASERS were used in approximately
10 20 percent of these cases, that 20 percent exhibited
11 six signs or symptomatology of excited delirium,
12 that none of these subjects died in police custody
13 even though various measures of force and devices
14 and equipment was used and placed in the prone
15 position with weight on their back from 1 to 5
16 minutes.

17 There was about 4 percent that received what
18 we considered a significant injury, a broken arm,
19 something of that nature, and then 16 received just
20 bruises, contusions. But no one died in the
21 research, which is consistent with Dr. Hall's study
22 in Canada. But I wanted to do one in the United
23 States.

24 Q. And that was approved -- the instruments and
25 the collection methods were all approved by the IRB?

1 A. Yes. And what I did was -- for that was -- I
2 didn't have to submit anything in writing to the
3 IRB. I called the director of the graduate program
4 and the chair of the committee and said here's what
5 I'm going to do. And I said I'm not -- the
6 instrument that we're using will be basically
7 secondary information, secondary analysis. We're
8 not surveying anyone. We're not putting humans --
9 not doing a human subjects study per se.

10 So it was a secondary clearance in that we
11 were not exposing any type of population to an
12 experimental design or experimental TASERS or
13 restraints or putting someone in a lab, something of
14 that nature. So it was taking reports that officers
15 would file in the field. From their report they
16 would take information and transfer it to the
17 instrument that was stored in the agency for 12
18 months, and then they sent me those instruments to
19 analyze.

20 Q. Okay. How many instruments did you -- were
21 ultimately returned?

22 A. We had 1,100, and out of that, 1,085 were
23 usable.

24 Q. From the 17 different departments that you --

25 A. Yes.

1 Q. -- sent them out to?

2 A. That's correct.

3 Q. Okay. You mentioned earlier you had a
4 coauthor who did the -- who ran the stats. Did
5 you -- so you did not participate in the regression
6 analysis or the heavy --

7 A. Very limitedly.

8 Q. Okay.

9 A. But he did it, yes. He did the stat
10 analysis.

11 Q. Okay. Is that the way that you have
12 conducted your research generally speaking, that you
13 include a coauthor for the heavy data work?

14 A. Not always, but sometimes, yes.

15 Q. Okay. When was the last time that you
16 yourself were primarily responsible for the
17 regression analysis on a data set for one of your
18 articles?

19 A. That's a good question. I want to say maybe
20 2005 or '06.

21 Q. Okay.

22 A. Somewhere in there roughly.

23 Q. Okay. Why don't you talk to your co-faculty
24 members about your work as an expert?

25 MR. PERKINS: Object to form;

1 proportionality. Go ahead.

2 THE WITNESS: Why don't I?

3 BY MR. KUHLMAN:

4 Q. Yes, sir.

5 A. No reason.

6 Q. Okay. Everybody goes home at the end of the
7 day and does other things and --

8 A. That's correct.

9 Q. Okay.

10 A. I'm more -- my position as a leader there,
11 I'm more concerned with helping them try to get
12 tenure and get their career promoted. I'm not the
13 type of personality or type of person that would go
14 around and, hey, look what I did last week or
15 whatever. But the work speaks for itself and it
16 gets out, because I have to be reviewed by faculty
17 every five years as well. So they're well aware
18 what I do.

19 Q. When was the last time you were reviewed,
20 your scholarship was reviewed?

21 A. Well, all my work was.

22 Q. Okay.

23 A. It's not just scholarship.

24 Q. Okay.

25 A. 2015.

1 Q. Was there a written report of the -- as a
2 result of that review?

3 A. Yes, there was.

4 Q. Would you be able to provide us a copy of
5 that report?

6 A. Of which report?

7 MR. PERKINS: Object to the form;
8 proportionality.

9 BY MR. KUHLMAN:

10 Q. Of the report conducted by the faculty
11 committee that you just mentioned that reviews you
12 every five years.

13 A. Sure.

14 Q. Okay. It's fair to say that placements are
15 down from 1992, when you got your PhD, to today;
16 correct?

17 A. What do you mean "placements"?

18 Q. That doctoral placements, that the number of
19 faculty appointments are -- there are fewer jobs
20 available today than there were when you came into
21 the higher ed in '92.

22 A. In criminal justice or generally?

23 Q. In your field.

24 A. You know, I don't know that I totally agree
25 with it. I haven't checked the stats lately in the

1 higher ed chronicle, but I see position openings
2 quite a bit --

3 Q. Okay.

4 A. -- in the field, in my field, in sociology,
5 anthropology and criminal justice. I don't get into
6 biology or chemistry or other fields, but in my
7 field it's -- I would say it might be down more than
8 sociology but not so much in criminal justice.
9 There seems to be more folks that are -- who have
10 come in the '70s and '80s and now retiring, which is
11 opening up some positions. Now, if you're talking
12 about new -- it just depends on the university and
13 their program growth.

14 Q. I'm just wondering about -- you said just a
15 minute ago that you spend -- you're primarily
16 focused -- when you're over there, you're primarily
17 focused on making sure that folks -- that grad
18 students get jobs. Is that what you said or not?

19 A. No, I didn't say that.

20 Q. Okay. Can you tell me, then, what -- how I
21 misunderstood your earlier statement about what it
22 is that you spend your time over there doing?

23 I'm having -- it's a broad question, but I'm
24 referring to --

25 A. I don't understand your question, and I never

1 said I'm more concerned about graduate students
2 getting a job. So I don't know where -- read back
3 whatever we had in the dep, but I'm not sure. I'm
4 not following you.

5 Q. Okay. I asked you why you didn't -- why you
6 didn't talk with or why nobody asked you about your
7 work as an expert, and you said you didn't need to
8 because that was something you did outside of hours.
9 Is that right?

10 A. Correct.

11 Q. Okay. And then it's my understanding that
12 just after that you told me about what it -- you
13 made an affirmative statement about what it is you
14 do do when you're in the department. That was the
15 question I was asking about.

16 A. Well, I lead the department, so I have a lot
17 of responsibilities in the department.

18 Q. Sure.

19 A. I teach class. I supervise all the faculty.
20 I have to schedule all the courses. I have to
21 participate in meetings with the dean, with faculty,
22 with groups, with students. I have to evaluate
23 faculty every year. I have to evaluate their
24 scholarship. So it's more about me as the leader of
25 that department leading them in terms of making sure

1 that they're on track to -- towards progress,
2 towards tenure, towards their scholarship, their
3 teaching. I sit in their class and evaluate their
4 teaching. So it's more about me as the leader
5 attending to their needs as opposed to, "Hey, come
6 in my office and listen to me today."

7 Q. Okay. I apologize. I misunderstood.

8 A. Yeah.

9 Q. Or I think I -- I think I understood you at
10 the time, but I misstated that, that you were -- you
11 were trying to convey, I think, that your -- when
12 you're in the department, you're more focused on
13 outreach to the other -- you're outwardly focused or
14 externally focused instead of drawing the folks in
15 and saying, "Look at what I've written or see what
16 I've worked on"?

17 A. Yes, exactly. Rarely has that come up.

18 Q. Again, I apologize for the detour.

19 A. That's fine.

20 Q. Let's go back here for just a second to
21 the -- to your publication -- to the journal
22 articles. Number 3, was there -- was there any
23 research methodology employed using that in order --
24 off of that article?

25 A. Yeah. I think I just used some basic

1 descriptive stats to review the trends and the
2 Department of Justice review of those institutions
3 that they found in violation.

4 Q. Okay. And in Number 4?

5 A. Number 4 was just taking that Supreme Court
6 case and analyzing and writing on that and then
7 looking at cases pre the decision, taking secondly
8 the decision and reviewing that from the Supreme
9 Court and what that really means now under the
10 Fourteenth Amendment and then postdecisions that
11 had -- at least at the time that I wrote the article
12 that had been starting to apply this case to
13 situations and incidents in jails.

14 Q. Okay. So out of this small set of your
15 articles, is it fair to say that those articles,
16 whether or not they're predicated on original
17 research or an analysis of Supreme Court decisions
18 or some other data set that's not necessarily
19 research designed by you, the conclusions that you
20 reach in those articles are only as good as the data
21 upon which they're predicated; correct?

22 A. That's true with any research.

23 Q. Okay. And so I asked you that as to just
24 these few articles, but I think you have already
25 answered -- you anticipated and answered my other

1 question, which is that can be the case across your
2 work.

3 A. That in --

4 Q. Go ahead.

5 A. My work or anybody's work.

6 Q. If your data is junk, your conclusions don't
7 matter.

8 A. That's true.

9 Q. Okay. Just to round this out, let's just
10 look at just very briefly if you can tell me about
11 the next five. We're not going to --

12 MR. KUHLMAN: Don't worry, Ben. We're not
13 going through 90 publications today.

14 MR. PERKINS: Good. Object to form;
15 proportionality.

16 BY MR. KUHLMAN:

17 Q. Okay. 11 to 15 were -- out of 11 to 15, I
18 believe that's Mr. Cash coming off of mute.

19 Anyhow, 11 to 15, are there any of those
20 articles that inform your opinions expressed in this
21 case?

22 A. 11 through 15? Some perhaps in Item 12.
23 That would be it.

24 Q. Okay. And now working backwards to the
25 monographs or book chapter section, can you identify

1 for me from that list which books or individual
2 chapters that you have authored inform your -- the
3 opinions you express in this case?

4 A. Well, book 1, Number 1, book 2, book 3, book
5 4. Monographs Number 1.

6 Q. Is that also Number 5?

7 A. No. Monograph. Under monograph I said
8 Number 1.

9 Q. Are we not looking -- I have got monographs
10 and book chapters consolidated as a single list on
11 mine from 1 through 9.

12 A. Correct. And you said books, too; right?
13 I'm going back to books.

14 Q. Okay. I apologize.

15 A. Yeah. Book 1. I said book 2, book 3, book
16 4. Now monographs books Number 1 under the
17 monographs, somewhat maybe 2 under monographs,
18 vaguely -- you know, maybe somewhat of 4 but not
19 specific on point. Number 5.

20 Q. How is Number 4 not directly on point?

21 A. Well, because this -- that particular article
22 was written pretty exclusively on excited delirium,
23 symptomatologies associated, excited delirium.
24 So -- and I don't consider this case an excited
25 delirium case.

1 Q. Okay. Just to clarify on that, you don't
2 intend to offer the jury an opinion -- and I don't
3 think I see it in your report for here -- about
4 excited delirium; correct?

5 A. Correct.

6 Q. Okay. Go ahead. Number 6.

7 A. Probably 6 and that would -- let's see.

8 Yeah, probably 7 and 8. And 9 is more with
9 custodial suicides, and this is not a suicide case.

10 Q. Okay. I would like to turn to your -- the
11 opinions that you express in your report. I'd like
12 to start by asking you about Opinion Number 3
13 beginning on page 29. Again, this may seem like an
14 obvious question, but --

15 A. 29. Okay.

16 Q. Who wrote the report?

17 A. I did.

18 Q. Approximately how many hours did it take you
19 to compose these first 33 pages of your report?

20 A. Just the report, writing the report?

21 Q. (Nodding head.)

22 A. Twenty-five or 26 probably.

23 Q. Twenty-five or 26 hours --

24 A. Yeah.

25 Q. -- writing the report itself?

1 A. Right.

2 Q. Okay. How many hours did you spend reviewing
3 the materials that you rely on in forming the
4 opinions?

5 A. About another 20 to 21 hours.

6 Q. Okay.

7 A. Roughly I have got about 47 hours into this
8 case.

9 Q. Does that include any time communicating with
10 Mr. Perkins?

11 A. Yes.

12 Q. Approximately how many hours of the 47 that
13 you got in this case did you spend communicating
14 with Mr. Perkins?

15 A. Hour, hour and a half over various time
16 periods, roughly.

17 Q. Do you recall when Mr. Perkins first called
18 you about the case?

19 A. He did not call me.

20 Q. Okay. How did he --

21 A. An associate of his called me. I think it
22 was Ms. Meadows. Back in September of '16.

23 Q. What information did Ms. Meadows provide to
24 you at that time?

25 A. It was a brief sketch, overview, highlight of

1 the facts of the case.

2 Q. Okay. Did you agree to take the case in that
3 initial conversation?

4 A. No. I said, "Please send me what you have
5 now, some documents, if you have generated officer
6 reports or investigation, what have you. And I'll
7 begin the preliminary review, and then I'll let you
8 know."

9 Q. I apologize. You said September of -- a year
10 ago; is that correct?

11 A. 2016, correct.

12 Q. Okay. And then the balance of your time
13 after the initial conversation -- I assume -- is it
14 fair to say then you reviewed the documents -- she
15 sent you the documents that you asked for?

16 A. Correct.

17 Q. And then at that point you made your decision
18 to accept the case?

19 A. Well, I called back and talked to her for a
20 period of time. In between there she left, and -- I
21 believe that this is correct. And I started to
22 speak with Mr. Perkins.

23 Q. Okay.

24 A. And I said, "Yeah, I would be willing to take
25 the case and offer up my opinion." And I wanted to

1 make sure what my role as an expert was in the case,
2 what I was specifically to review and opine on.

3 Q. Approximately how many hours did you spend
4 reviewing the documents before you made the
5 decision -- you accepted the case?

6 A. I don't know. I didn't time it. I didn't
7 clock it. I didn't --

8 Q. Was it less than five hours?

9 A. No. Probably five or six.

10 Q. I'm going to get our socks on over our boots
11 here for just a minute, but if you'll turn with me
12 to the earlier portion of your report, to the
13 reliance materials section, again, on page 2.

14 Earlier today when we were -- before we went
15 on the record, we had a brief conversation about the
16 materials that you reviewed in this case. Can you
17 just very -- take as much time as you need, but if
18 you can just go through the list beginning on --
19 there at the bottom of page 2 and continuing through
20 the end of page 3 and confirm for me whether or not
21 there need to be any changes, additions or
22 subtractions to those materials.

23 A. I can tell you to add. There were five
24 TASER-related incidents that was provided to me
25 after I submitted the report.

1 Q. Okay. With the exception of this addition,
2 the list is otherwise complete?

3 A. Yes, sir.

4 Q. Okay.

5 MR. PERKINS: I think I wrote you an e-mail,
6 Cameron, in which I identified some documents that
7 had been produced related to training that I also
8 provided to Dr. Ross.

9 THE WITNESS: There were training exhibits or
10 files on Lieutenant Johnson, I believe, yes, and
11 maybe Jason Kenny. I think maybe Martinez. That
12 was it, as I recall.

13 MR. KUHLMAN: Ben, I apologize. Could you
14 maybe send that to me again? Or we can do it
15 later. But it may have been that only went to
16 Bill, and I don't know that I got it. If I did, I
17 apologize.

18 MR. PERKINS: Yeah. I have got the e-mail
19 right here, actually. I printed it for you.

20 MR. KUHLMAN: Okay.

21 MR. PERKINS: Here you go.

22 MR. KUHLMAN: Thank you.

23 MR. PERKINS: Sure.

24 MR. KUHLMAN: Oh, I apologize. Yes, I do
25 recall this e-mail. I thought you were saying

1 something -- I was looking for additional
2 attachments. Thank you.

3 BY MR. KUHLMAN:

4 Q. The videos -- did you -- do you recall
5 reviewing some videos prepared by another expert in
6 this case?

7 A. Yes.

8 Q. Okay.

9 A. Mr. Root, I believe.

10 Q. Yes.

11 A. Two videos. I don't know if they were
12 prepared by him, but -- when you say prepared, he
13 took the videos?

14 MR. PERKINS: It was picture-in-picture
15 videos.

16 THE WITNESS: Yeah.

17 BY MR. KUHLMAN:

18 Q. Prepared might be a little generous. Maybe
19 edited would be a better verb.

20 A. I would agree with that.

21 Q. Okay. Compiled perhaps. No, he didn't go in
22 there with his handy cam and actually shoot the
23 videos.

24 A. Yeah. I know he was not there at the
25 incident.

1 Q. These are -- just to be clear, these are
2 surveillance -- these are edited copies of
3 surveillance video which Dennis Root in order to
4 sort of -- or compiled in order to help understand
5 who was who?

6 A. Correct.

7 Q. Okay. And the Internal Affairs reports that
8 I think are in -- that are listed here on -- the
9 Internal Affairs investigation report, the second
10 item on the list.

11 A. Yes.

12 Q. Okay. Does that include -- did you also
13 review the report of one of plaintiff's experts,
14 Mike Berg?

15 A. His report, yes.

16 Q. Yes? Okay. What about his --

17 A. That's indicated down at the bottom.

18 Q. I'm sorry. What about his deposition
19 transcript?

20 A. No.

21 Q. Okay. Did you review the deposition
22 transcripts of any of plaintiff's experts?

23 A. No.

24 Q. Only their reports?

25 A. Correct.

1 Q. Okay.

2 MR. KUHLMAN: Thank you, Ben.

3 MR. PERKINS: Sure.

4 BY MR. KUHLMAN:

5 Q. Are there any portions of these depositions
6 that you have got listed here which you want to
7 try -- which you want to say you did not, in fact,
8 review or you read each one of these depositions?

9 A. I read each one of those.

10 Q. Okay. And the same goes for the IA reports?

11 A. Yes.

12 Q. And the personnel files?

13 A. Correct.

14 Q. Okay. All right. Let's go back now to
15 page -- I believe it's page 30.

16 A. Of the report?

17 Q. Or 29 of your report, yes, sir. Beginning
18 with the heading Opinion 3. I want to turn --
19 direct your attention to the end of -- near the end
20 of that. It's actually on the end of 32, 31 and 32,
21 the bottom paragraph, last line of the paragraph.
22 You have got a couple of citations here. Can you
23 identify those citations for me? The last on 31 and
24 going over to 32.

25 A. When you say "identify," be more specific.

1 What do you want me to -- you mean NIJ, what does
2 that mean? National Institute of Justice.

3 Q. No, sir. I apologize. The -- you have
4 got -- beginning with the -- you say Laub, "Laub of
5 the DOJ and Bozeman report that" -- and you continue
6 from there. Are those -- those are authors;
7 correct?

8 A. Correct.

9 Q. Okay. And so in the AP -- or, excuse me, in
10 the APA style, this is a way of indicating a
11 citation to an article; correct? By listing the
12 author and then the parenthetical year; is that
13 correct?

14 A. That's correct.

15 Q. Okay. So it's fair to say then this is a
16 reference to Laub of the DOJ, an article written by
17 Laub of the DOJ in 2011?

18 A. It's a report, yes.

19 Q. It's a report. Excuse me.

20 A. Yes.

21 Q. And is it a separate report by Bozeman
22 et al.?

23 A. Yes.

24 Q. Okay. And what is -- what is the reported
25 finding of those two authors as indicated in your

1 report?

2 A. Well, Laub was part of a greater expert
3 technical working group on the use of the TASER and
4 TASER-related deaths with -- I have to go back and
5 double-check, but it's about 25 to 30 medical
6 doctors and some practitioners who reviewed over
7 300-plus -- it's like a meta-analysis almost of
8 medical review articles on the use of the TASER and
9 medical complications or implications from that.
10 And from that working group and from their review,
11 they produced about a 74-page report on the
12 application and use of the TASER as related to
13 associated deaths.

14 Q. Okay. And what about Bozeman?

15 A. Bozeman was additional authors. It's a
16 separate. He did his own research in the field with
17 other researchers in 2009 and did an analysis of the
18 use of TASERs and gave some, I think, limited
19 statistical analysis but showed the safety and
20 significance and the probability of using a TASER
21 and the risk of death.

22 Q. Okay. Is it accurate to say that those are
23 two additional materials, those -- those two reports
24 are additional materials that you relied on in
25 forming the opinions expressed in the report?

1 A. I don't know if I -- I guess the word "rely,"
2 it supported my opinion, put it that way.

3 Q. I'll use your word, supported your opinion.
4 And you're welcome to correct me if I --

5 A. Okay.

6 Q. -- happen to slip up and say rely later when
7 I'm talking to you about this.

8 Do you remember -- well, I'll just -- I'm
9 going to show you -- can we get Ross 1.

10 - - -

11 (Ross Exhibit 1, Article titled "Safety and
12 Injury Profile of Conducted Electrical Weapons Used by
13 Law Enforcement Officers Against Criminal Suspects", was
14 marked for identification.)

15 - - -

16 BY MR. KUHLMAN:

17 Q. I'm going to show you what we have marked
18 here as Ross 1. Can you tell me -- this is a
19 journal article. Can you tell me the title of the
20 journal article?

21 A. Yeah. "Safety and Injury Profile of
22 Conducted Electrical Weapons Used by Law Enforcement
23 Officers Against Criminal Suspects."

24 Q. Okay. Is this the article that you've got
25 the short cite to in your conclusion, Bozeman

1 et al.?

2 A. Correct.

3 Q. Okay. And so if you open the article to
4 after the discussion, toward the end of the
5 discussion, which you might expect to be a
6 conclusion, the -- this is on page 487 of the
7 article, the right-hand column, can you read to me
8 the first full paragraph there? "In this large
9 multicenter" -- the sentence begins, "In this large
10 multicenter cohort..."

11 A. Do you want me to read it aloud?

12 Q. Yes. The first sentence.

13 A. "In the large multicenter cohort, the
14 observed risk of significant injury after conducted
15 electrical weapon used by law enforcement officers
16 is 0.025 [sic] percent."

17 Do you want me to continue?

18 Q. Well, no. Just that sentence. But is it --
19 is it 0.025 or is it 0.25?

20 A. 0.25.

21 Q. Okay. So can you find -- can you point me to
22 the portion of the article where the risk factor
23 that you have identified in your piece is 0.0025?

24 A. Well, it might be a typo but --

25 MR. PERKINS: No. He's saying -- that says

1 risk of significant injury, and this one says --

2 MR. KUHLMAN: Mr. Perkins, if we have the
3 witness do the testifying here, I'd appreciate it.

4 MR. PERKINS: I'm just trying to help him
5 understand your question.

6 THE WITNESS: Well, I think that's also from
7 the Laub article report as well. So that's
8 probably where I got that from. But also in terms
9 of his injury and/or death as I think reported in
10 his case abstract.

11 BY MR. KUHLMAN:

12 Q. Okay. But it's fair to say that in your
13 report you write, "Bozeman et al. reports that the
14 TASER is safe and has a statistical probability of
15 risk or death of less than 0.0025 percent."

16 Correct?

17 A. Correct.

18 Q. Okay. Is there a -- can you show me the
19 incidents or the finding within Bozeman et al. that
20 supports that -- or is indicated by that citation?

21 A. Well, again, it might be an extra zero there,
22 but the title itself, the case -- secondly, the case
23 abstract says that it's safe. It says it has -- no
24 more than 99 percent of the subjects do not
25 experience significant injuries after conducted

1 electrical weapon use. So that's where I would get
2 that information from.

3 Q. With all due respect, Dr. Ross, within your,
4 you know, nearly 30 years, you know, within the --
5 coming up in 25 years in the academy, there's a
6 significant difference between a figure 0.25 percent
7 and a figure 0.0025 percent.

8 A. That's correct. I would agree with that.

9 Q. Okay. So it may be that the conclusions
10 reached by Ross are not necessarily -- excuse me, by
11 Bozeman, are not necessarily consistent with what
12 you have got written here in the report.

13 A. I would say by a typo.

14 Q. Okay. So should we -- should we amend your
15 report to say 0.25?

16 A. I would think so, yeah.

17 Q. Okay.

18 A. That would be fine.

19 MR. PERKINS: Hold on. Okay. I object.
20 Object to the question because that's a misleading
21 question and misleading statement. His report
22 says the risk of death of less than
23 0.0025 percent. This report references risk of
24 serious injury of 0.25 percent. So it's an
25 entirely separate issue that you're trying to get

1 him to agree to.

2 MR. KUHLMAN: No. I'm getting him to -- I'm
3 asking him whether the conclusion that he reaches
4 in his report, including a direct citation to an
5 article, is directly borne out in that article.
6 If you want to find for me a place where the
7 article says the risk of death is 0.0025, I would
8 be happy to hear that from the witness.

9 MR. PERKINS: Well, I would challenge you to
10 find anybody who's going to give you a higher
11 statistical percentage than that as to cause of
12 death. And I also object to this question and
13 lines of proportionality since he's an expert.
14 We've already admitted he didn't die as a result
15 of the TASER itself. They both said it was a
16 contributing factor. So why you're asking these
17 questions is beyond me.

18 MR. KUHLMAN: Respectfully, Mr. Perkins, this
19 is my one opportunity to explore the territory
20 that -- the conclusions and opinions reached by an
21 expert that y'all have put up. And so to the
22 extent that Dr. Ross has expressed opinions here
23 which are informed by his work as a social
24 scientist and a researcher, I think I'm entitled
25 to ask him whether or not --

1 MR. PERKINS: I didn't instruct him not to
2 answer, Cameron. I just made my objection. Go
3 ahead.

4 MR. KUHLMAN: Well, you have got a lot of
5 instruction in your answer -- in your objection,
6 and I would appreciate it --

7 MR. PERKINS: You have got to go to Athens.
8 I have to go somewhere. Come on, Cameron. Let's
9 just move on.

10 BY MR. KUHLMAN:

11 Q. Dr. Ross, again, just in the Bozeman article,
12 can you identify for me any evaluation that in this
13 study of the application and multiple -- or the --
14 multiple applications of a TASER in a short time
15 frame?

16 A. I don't follow the question.

17 Q. Okay. Do you see on page 483 of the
18 article --

19 A. I'm there.

20 Q. Okay. Of the right-hand column. This is
21 talking about the data which we have just said -- I
22 think you testified just a minute ago that the
23 conclusions reached by a social science researcher
24 is only as good as the data; correct? Is that your
25 earlier testimony?

1 A. That's correct.

2 Q. Okay. The data that -- upon which Bozeman
3 et al. reached their conclusion are described in
4 more detail on page 483; correct?

5 A. More detail than what?

6 Q. Well, are detailed. This is within the
7 results section of the article; correct?

8 A. I would answer that the data is reflected --
9 characteristics of the agencies are reflected on 483
10 in Table 2 as you're referring to, and it
11 subsequently goes on to much more explanation in the
12 subsequent pages.

13 Q. Okay. Can you tell me what the median number
14 of conducted electrical weapon discharges was in
15 this -- in the data collected by Bozeman et al.?

16 A. The median application?

17 Q. Number of discharges, yes, sir.

18 A. I'd have to read this thing. It doesn't say
19 that in that table.

20 Q. No, it's not in the table. It's in the
21 column on the bottom. The right-hand column, three
22 lines up from the bottom.

23 A. Probe mode was used in 784 cases, drive-stun
24 mode was in 327, and both modes in 90 cases.

25 Q. And the next sentence?

1 A. And the mean number of conducted electrical
2 weapon discharges was 1.8. The median was 1.

3 Q. Okay. Based on your training and experience
4 and more than 30 years of providing training to law
5 enforcement agencies, is it a fair conclusion to
6 draw from this data that multiple applications,
7 meaning more than one, is safe?

8 A. Yes. Oh, absolutely.

9 Q. How is that an appropriate conclusion to draw
10 from a data set where the median number of
11 applications was one?

12 A. Because in 99 percent of the other ones there
13 was no injury.

14 Q. But in 99 percent -- what do you mean?

15 A. As he says conclusion on the front page in
16 his abstract, "To our knowledge, these findings
17 represent the first large, independent, multicenter
18 study of conducted electrical weapon injury
19 epidemiology and suggest that more than 99 percent
20 of subjects do not experience significant injuries
21 after conducted electrical weapon use."

22 Q. Okay. But is there anything in that
23 conclusion that indicates that this is -- this
24 report is based on study of instances including
25 multiple applications?

1 A. Yes.

2 Q. What is the median --

3 A. When you say -- excuse me. Multiple
4 applications of, what, trigger pulls? Multiple
5 applications on subjects? There were a number of
6 subjects -- there were 1200 subjects that were
7 exposed to the conducted electrical weapon over 36
8 months.

9 Q. The number -- when I asked you for the
10 median, I'm talking about the number of conducted
11 electrical weapons discharges.

12 A. And the mean number was 1.

13 Q. One. Thank you.

14 A. Discharges.

15 MR. KUHLMAN: Do you want to go off the
16 record for a minute?

17 MR. PERKINS: Yeah.

18 MR. KUHLMAN: Do you need a break?

19 MR. PERKINS: Sure.

20 MR. KUHLMAN: Okay. Let's take a break.

21 (A recess was taken from 12:03 p.m. until
22 12:04 p.m.)

23 MR. KUHLMAN: Back on.

24 - - -

25 (Ross Exhibit 2, Article titled "Electronic

1 Control Device Exposure: A Review of Morbidity and
2 Mortality", was marked for identification.)

3 - - -

4 BY MR. KUHLMAN:

5 Q. Dr. Ross, I'm going to show you what we have
6 marked as Ross 2. Can you read me the title of this
7 article?

8 A. "Electronic Control Device Exposure: A
9 Review of Morbidity and Mortality."

10 Q. Okay. Do you recognize this article?

11 A. No.

12 Q. Okay. Do you recognize the names of any of
13 the authors?

14 A. No, I don't.

15 Q. Okay. Do you recognize the journal in which
16 it was published?

17 A. Yes.

18 Q. Okay. What's the journal in which it was
19 published?

20 A. Annals of Emergency Medicine.

21 Q. Okay. And what was the journal that the
22 Bozeman article -- the Bozeman report was published?

23 A. Annals of Emergency Medicine.

24 Q. It's the same publication; correct?

25 A. Correct.

1 Q. And what's the year of this publication?

2 A. 2011.

3 Q. Okay. As compared to the Bozeman piece?

4 A. 2009.

5 Q. Okay. Do you have any reason to question the
6 veracity of an article published in the Annals of
7 Emergency Medicine?

8 A. Not unless I have read it.

9 Q. I understand that, but just by mere --

10 A. I can't answer that.

11 Q. -- appearance in the article -- in the
12 journal?

13 A. No, I can't answer that.

14 Q. Okay. Have you read this article?

15 A. No, I have not.

16 Q. Okay. You can set that aside.

17 - - -

18 (Ross Exhibit 3, Article titled "Police Use of
19 Force and Officer Injuries: Comparing Conducted Energy
20 Devices (CEDs) to Hands- and Weapon-Based Tactics", was
21 marked for identification.)

22 - - -

23 BY MR. KUHLMAN:

24 Q. I'm going to show you what we have marked as

25 Ross 3. Can you read me the title of that article?

1 A. "Police Use of Force and Officer Injuries:
2 Comparing Conducted Energy Devices (CEDs) to Hands-
3 and Weapon-Based Tactics."

4 Q. Okay. Do you recognize any of the names of
5 the authors of this article?

6 A. Yes. William Terrill.

7 Q. Okay. Who's affiliated or affiliated with
8 Michigan State; correct?

9 A. Correct.

10 Q. Is Professor Terrill, Dr. Terrill, someone
11 you know?

12 A. No.

13 Q. Okay. You-all just share former
14 institutional affiliation?

15 A. Well, I graduated from there. He works
16 there.

17 Q. Okay. Have you had any opportunity to review
18 his scholarship in this area?

19 A. Only this article about four or five years
20 ago.

21 Q. Okay. So you have, in fact, reviewed --

22 MR. KUHLMAN: I'm sorry, Ben.

23 BY MR. KUHLMAN:

24 Q. You have, in fact, reviewed this article?

25 A. Yes.

1 Q. Okay. Are you aware of the conclusion --
2 well, are you -- which -- which -- what is the name
3 of the journal in which this article is published?

4 A. Police -- excuse me. Policy Quarterly.

5 Q. Okay. And the year of publication?

6 A. 2012.

7 Q. Okay. Are you generally aware of the
8 conclusion reached by this -- by these authors?

9 A. Like I said, I read it many years ago. I
10 would have to reread it to answer any specific
11 questions you might have.

12 Q. Okay. We'll set that aside for now.

13 Turning back now to your report for a minute,
14 the sentence after -- we have just been talking
15 about Bozeman. The next sentence in that report, in
16 your report, is a cite to Kroll; is that correct?

17 A. That's correct.

18 Q. Okay.

19 A. Et al.

20 Q. Okay. Kroll et al. Excuse me. A 2014
21 article; correct?

22 A. Correct.

23 Q. All right. What is the -- what is the
24 reported finding of Kroll et al., 2014?

25 A. As I indicated in the sentence there, his

1 finding of TASER-induced cardiac arrest is extremely
2 low, if not zero.

3 Q. Okay. Do you -- are you personally aware of
4 Dr. Kroll?

5 A. Yes, I am.

6 Q. Okay. Are you-all friends?

7 A. I would say we're acquaintances.

8 Q. Okay.

9 A. We have done training together. I don't know
10 if friends -- I have not socialized outside of our
11 occupation.

12 Q. But you-all have a professional acquaintance?

13 A. Yes.

14 Q. Do you have similar research interests?

15 A. Yes.

16 Q. Those being the use of force by law
17 enforcement and corrections officers?

18 A. I would say no. We would depart there. Mine
19 is more use of force. His is more the electrical
20 reaction and implications of using the TASER during
21 use of force and explaining the use of TASERS as it
22 impacts the physiology of the body. That's clearly
23 outside my area of expertise. Trust me.

24 Q. That's -- I appreciate that classic -- that's
25 a very -- that's a scholarly answer. Thank you for

1 distinguishing your project from his.

2 Were you able to read his article, though?

3 You have cited it.

4 A. Yes.

5 Q. So I assume you have at least enough of an
6 understanding and experience to be able to read his
7 article and draw some conclusion from it; correct?

8 A. Correct. And I have been in many of his
9 training classes.

10 Q. Okay. Would you -- is it fair to say that
11 you-all agree on the effects of the TASER? Do you
12 agree with his findings generally?

13 A. Yes, I do generally.

14 Q. Okay. Do you know whether he agrees with the
15 conclusions you reach in your research?

16 A. That I couldn't tell you. Other than let me
17 just tell you -- I guess I have to digress on that
18 just thinking about it a little bit more. He's
19 reviewed the research that I have done when we talk
20 about the violent prone restraint we did for the 17
21 departments over the year period, and then he's
22 reviewed and agreed with what we have found and our
23 conclusions in that particular study.

24 He's also, I would say, agreed with our
25 conclusions. Mr. Mike Brave and myself who did an

1 assessment of the liability trends of associated
2 deaths after the use of the TASER, secondly.

3 And I don't think -- I don't think there's
4 any other right off the top of my head of other
5 articles or research.

6 Q. Have you -- you-all haven't ever coauthored
7 anything?

8 A. No, sir.

9 Q. Okay. Have you ever presented on a panel
10 together?

11 A. Yes, we have.

12 Q. Okay. What panel was that?

13 A. 2015 -- excuse me, 2016, April, March or
14 April in 2016. It's in my CV. Dr. Kroll, myself
15 and Michael Brave presented at the International Law
16 Enforcement Educators and Trainers Association
17 conference, and that -- I think it was in Chicago at
18 that time. We presented a four-hour presentation on
19 investigating associated arrest-related deaths. He
20 made a presentation as part of that four-hour
21 presentation.

22 Then this past June, June of '17, 2017, he
23 was part of a conference that I presented at. He
24 presented at the conference. Use of force in police
25 world in Miami, Florida, or just north of that in a

1 conference that we presented. He presented a
2 presentation. I also presented information as well,
3 a presentation at that conference.

4 Q. I don't see that one on your --

5 A. It's conference presentations. It would be
6 back further --

7 Q. Oh, I apologize.

8 A. -- in the -- I can direct you to that real
9 quick.

10 It would be on page 32. Let me see. Where
11 is it?

12 Q. Is it June '17?

13 A. Yes, June '17, the second item.

14 Q. Okay. Were there slides or was that a paper
15 presentation?

16 A. From me?

17 Q. From either of you.

18 A. He had a PowerPoint presentation, and I also
19 did.

20 Q. Okay. Is that something you kept, your
21 PowerPoint presentation?

22 A. Oh, absolutely.

23 Q. Okay. So if we ask Mr. Perkins for a copy of
24 it, we can get a copy of the PowerPoint from that?

25 A. Sure.

1 Q. Okay. What about Dr. Kroll's materials?

2 A. I don't have a copy of that.

3 Q. I understand. I would ask you the same
4 questions about the Chicago training. Did you-all
5 get together ahead of time to develop the training
6 program together?

7 A. No, not -- it was over the phone.

8 Q. Okay. And then was it a joint presentation
9 or you each took a portion of the time?

10 A. It was a joint presentation where we took a
11 portion of the time, so yeah.

12 Q. Okay. What about the materials that you used
13 to prepare for that presentation?

14 A. I have that.

15 Q. And, again, if we ask Mr. Perkins for it, we
16 could get it from you?

17 A. Sure.

18 Q. Okay. All right. Any other professional
19 associations or affiliations or collaborations with
20 Dr. Kroll that you can think of?

21 A. Yes.

22 Q. Okay. What, for example?

23 A. That is on our most recent book. He wrote a
24 chapter in the book that we -- I just published with
25 Dr. Vilke in July of '17. He wrote a chapter on how

1 to investigate TASER-related/associated death after
2 the use of a TASER.

3 Q. Right. Okay. I want to show you we're going
4 to do Ross 4 here.

5 - - -

6 (Ross Exhibit 4, Article titled "Can TASER
7 Electronic Control Devices Cause Cardiac Arrest? by Mark
8 W. Kroll, PhD, et al., was marked for identification.)

9 - - -

10 BY MR. KUHLMAN:

11 Q. Let me show you what we have marked as
12 Ross 4. Can you tell me the name of this article?

13 A. "Can TASER Electronic Control Devices Cause
14 Cardiac Arrest?"

15 Q. Okay. Is this the article in which you refer
16 to in your conclusion or the report that the
17 incidents of TASER-induced cardiac arrest is
18 extremely low?

19 A. Correct.

20 Q. Okay. Do you have any reason to dispute or
21 quibble with the methodology Dr. Kroll et al.
22 utilized in reaching their findings here?

23 A. No.

24 Q. Okay. Can you -- are you -- you have read
25 this article, I assume?

1 A. Yes.

2 Q. Okay. Because it, in fact, informs the
3 opinions you reach in this case?

4 A. Yes.

5 Q. All right. And tell us just generally what
6 is the conclusion -- maybe just a little bit more
7 detail than the conclusion as summarized in your
8 report.

9 A. Well, as he states -- Dr. Kroll et al. and
10 his other coauthors state in terms of their
11 reviewing the number of applications of the
12 controlled energy devices or electronic controlled
13 devices and looked at other cases, and they come to
14 a conclusion based on the number of forceful
15 arrests, the number of applications in the field,
16 the result in investigation, examination, analysis
17 of case studies. They come to a conclusion then in
18 terms of looking at some of the physiological
19 implications, responses of the TASER.

20 They list 12 cases in which they -- case
21 studies they have investigated where they had the
22 materials or access to those and then come to the
23 conclusion based on the nature of the TASER, the
24 arrest, the condition of the subject that the
25 likelihood -- and I want to make sure -- they come

1 with their conclusion on page 98 under discussion
2 three findings.

3 Q. Okay. And what are those findings?

4 A. Number 1, demonstrated incident of
5 ECD-induced cardiac arrest is extremely low, if not
6 zero, which I cited in my report.

7 Two, conclusions of all connections between
8 ECD use and cardiac arrest are speculative at best.

9 And, three, the role of several non-ECD
10 confounding factors explaining cardiac arrest are
11 not accounted for the published case reports.

12 Q. Okay. I want to show you what I promise is
13 the last one before lunch. I think we're on 5 here.

14 - - -

15 (Ross Exhibit 5, Article Titled "Can TASER
16 Electronic Control Devices Cause Cardiac Arrest?" by
17 Douglas P. Zipes, MD, was marked for identification.)

18 - - -

19 BY MR. KUHLMAN:

20 Q. Can you tell me the name of this article, the
21 title of the article?

22 A. Yes. "Can TASER Electronic Devices Cause
23 Cardiac Arrest?" This is by Dr. Zipes.

24 Q. Okay.

25 A. Z-i-p-e-s.

1 Q. And what is the -- what is the journal or the
2 publication?

3 A. Circulation.

4 Q. I'm sorry?

5 A. Circulation.

6 Q. Okay. And is that the same journal as
7 Dr. Knowles -- Kroll, excuse me, Dr. Kroll's article
8 appeared in?

9 A. Yes.

10 Q. Okay. And what is the date of Dr. Kroll's
11 article?

12 A. 2014.

13 Q. Okay. And the date of Dr. Zipes'?

14 A. 2014.

15 Q. Okay. Have you reviewed this article?

16 A. I have, but it's been awhile.

17 Q. Okay. Can you -- can you look back at 4 in
18 the middle of the left column in between the two
19 lines there. What does it say?

20 A. "Response by Zipes on page 100."

21 Q. Okay. And then in Number 5 there, what is --
22 in the same, in the bracket.

23 A. "Response by Kroll et al. on page 111."

24 Q. Okay. Based on what you understand about
25 these two authors and -- or multiple authors with

1 Dr. Kroll, is it -- is it fair to characterize these
2 two articles as part of an ongoing debate between
3 these two about the safety of the use of a TASER?

4 A. I can answer it this way: It's a larger
5 debate beyond just Dr. Zipes and Dr. Kroll and his
6 coauthors. It's much larger than just those
7 authors. It's in the whole community, I would say,
8 of those who have taken occasion to opine. And
9 there's other authors that I have read in this
10 debate, as you describe it, that counter Dr. Zipes'
11 conclusions.

12 Q. Okay. But there's no -- it's fair to say
13 there's no agreement in the literature as of right
14 now about the safety of a TASER?

15 A. Oh, yeah. I would disagree with that.

16 Q. I'm sorry. You would disagree with --

17 A. Yeah, I would disagree, that there is in the
18 literature conclusion that TASER is safe.

19 Q. I understand that there's a -- that there
20 are -- there is a conclusion in the literature that
21 the TASER is safe, but Dr. Zipes et al., not
22 necessarily in the same article, but Dr. Zipes and
23 other authors have reached the opposite conclusion.
24 Is that fair to say?

25 A. Very minimal. I would say, if we're trying

1 to look at using some of your questioning earlier in
2 terms of proportionality and percentage-wise, that
3 he would be in the minority, Dr. Zipes.

4 Q. Okay. Well, you were the one I think who
5 characterized it is a part of a larger conversation.
6 You said it's not just between these two authors.

7 A. Oh, yeah, I would agree with that.

8 Q. Okay. So whether or not there's consensus on
9 this issue is an open question?

10 MR. PERKINS: Object to form.

11 THE WITNESS: No. I would say the percentage
12 of the consensus is that it's safe by the medical
13 researchers who have actually done human subject
14 research on the use of the TASER and published the
15 results. So it's 99 percent of all those versus
16 the single one of Zipes.

17 BY MR. KUHLMAN:

18 Q. Are you aware of a distinction in the
19 literature between single use applications and
20 multiple use applications?

21 A. Oh, yes.

22 Q. And is the conclusion reached by the study of
23 multiple use applications the same as the
24 conclusions reached by single use applications?

25 A. By and large, yes.

1 Q. Can you provide any -- can you direct us to
2 an article or other publication which would help us
3 settle this debate?

4 A. I don't know if it would ever settle it
5 because people have differing opinions, but I can
6 direct you -- not off the top of my head. Well, I
7 can one. My study that I did with violent prone
8 incidents.

9 Q. The one you told us about earlier?

10 A. Correct.

11 Q. Okay. And your conclusion there is?

12 A. That 200 applications of the TASER with four
13 trigger pulls was safe. Nobody died.

14 Q. And that data was collected from 17 agencies
15 that you selected?

16 A. Correct. That I asked to voluntarily
17 participate.

18 Q. Right.

19 A. And they agreed.

20 Q. And how did you arrive at those 17 -- remind
21 me again how you arrived at those 17 agencies.

22 A. We analyzed the reports that they submitted.

23 Q. No. No. I'm sorry. The design stage, how
24 did you select those 17 agencies to participate in
25 the --

1 A. I sent a call out to agencies that were
2 across the country.

3 Q. Okay. And so is it your conclusion that
4 that -- those 17 was sufficiently randomized to
5 produce results that were both reliable and
6 repeatable?

7 A. Yes, because it involved municipal police
8 departments, small and large and medium size, across
9 the country. It wasn't just from one region. It
10 wasn't just from one size agency.

11 And, secondly, it was also sheriff's
12 departments, road department deputies. So we had
13 sheriff's department, municipalities across the
14 United States and not just from one region, not one
15 department.

16 MR. KUHLMAN: Okay. I'm at a place where I
17 would be willing to take a break. I don't know.
18 How about y'all?

19 MR. PERKINS: That's fine.

20 THE WITNESS: That's fine.

21 (A recess was taken from 12:24 p.m. until
22 1:33 p.m.)

23 (Mr. Cash not present on telephone.)

24 MR. KUHLMAN: We are back after a lunch
25 break.

1 BY MR. KUHLMAN:

2 Q. Dr. Ross, I just want to ask you a few
3 housekeeping matters here as we get back from the
4 break. You're not a physician; correct?

5 A. No, sir.

6 Q. You don't have any medical training?

7 A. No, sir.

8 Q. Okay. And I think earlier you told me you're
9 not a lawyer; right?

10 A. Correct.

11 Q. Okay. And so you didn't -- you didn't go to
12 law school?

13 A. No, I did not.

14 Q. Okay. Do you have any counseling or
15 psychology training, mental health-specific training
16 or education?

17 A. Mental health training, yes.

18 Q. Okay. But you don't have a -- you're --
19 you're -- do you intend to offer an opinion in this
20 case about mental health diagnoses?

21 MR. PERKINS: Object to form.

22 BY MR. KUHLMAN:

23 Q. Do you feel like you're qualified to offer an
24 opinion about a mental health diagnosis in this
25 case?

1 MR. PERKINS: Object to form.

2 THE WITNESS: If you're asking me am I going
3 to opine about some type of classification of
4 mental health, no.

5 BY MR. KUHLMAN:

6 Q. Okay.

7 A. I'm not going to -- I'm not going to diagnose
8 anyone, nor have I rendered any opinion in that
9 regard.

10 Q. So if you're not a medical doctor -- for
11 example, you're not a cardiologist either; correct?

12 A. That's correct.

13 Q. And you're not a pathologist?

14 A. Correct.

15 Q. So are you going to express -- do you intend
16 to express an opinion in this case about the cause
17 of Mathew's death?

18 A. Not generally, no. Not unless you ask me a
19 question. I'll be responsive to any question you
20 ask.

21 Q. I appreciate that.

22 Are you going to -- you don't intend to
23 express an opinion about the medicine in this case;
24 correct?

25 A. No.

1 Q. What about are you a trained licensed
2 practical nurse?

3 A. No.

4 Q. Okay. Do you intend to express an opinion
5 about -- in this case about the nursing care
6 provided by Greg Brown?

7 A. No.

8 Q. Okay. Are you a corrections health care
9 administrator?

10 A. No.

11 Q. So is it fair to say that you don't intend to
12 express any opinions about the Corizon Health Care
13 policies in this case?

14 A. No.

15 Q. Okay.

16 A. No.

17 Q. Just so we're clear, the practical experience
18 that we talked about earlier that you have ended in
19 1985?

20 MR. PERKINS: Object to form.

21 THE WITNESS: That's correct.

22 BY MR. KUHLMAN:

23 Q. Okay. And --

24 MR. PERKINS: You said practical experience?

25 ///

1 BY MR. KUHLMAN:

2 Q. Well, let's use the term in the CV. Field
3 experience; is that correct?

4 A. That's correct.

5 Q. Okay. And that in the time since 1985 you
6 have been in higher education?

7 A. That's correct.

8 Q. Okay. Of the -- I want to ask you about the
9 training programs that you provided for law
10 enforcement officers. Do you -- what sort of
11 categories -- what categories of corrections
12 officers are the primary audience for your training
13 materials?

14 A. What kind of corrections officers?

15 Q. What categories -- and I'm talking here
16 mostly in terms of, like, rank. And I'll just ask
17 you, is it the policy makers and the administrators
18 that are your target audience for your training or
19 is it line level officers?

20 A. I have trained all, but probably primarily
21 more over the last ten years would be more
22 administrator sheriffs, jail administrators, chief
23 deputies, undersheriffs depending on what state
24 you're from.

25 Q. Okay. And, again, those are all -- whether

1 everybody -- every agency seems to have a different
2 sort of title for what is effectively management of
3 the facility; correct?

4 A. Right. Right.

5 Q. All right. Or in the case of law
6 enforcement, management of the law enforcement
7 activity outside of the facility, the agency?

8 A. That's correct.

9 Q. Okay. When was the last time that you can
10 recall providing a training to line level officers?

11 A. Corrections officers or police officers?

12 Q. Corrections officers.

13 A. It would have been last month.

14 Q. Okay. Is that the program -- is that the
15 presentation that we -- have we discussed that
16 presentation?

17 A. I don't believe so.

18 Q. Okay. What was that?

19 A. That was a mixture of the administrators and
20 the corrections officers and executives, midlevel
21 administrators, trainers, instructors and officers.
22 So it was a combination. And that was in August of
23 2017 in Pigeon Forge, Tennessee, at the corrections
24 officers -- corrections facility training officer
25 conference put on by the Tennessee Corrections

1 Institute, which is a state agency.

2 Q. Okay. At one of these -- at these
3 conferences has it been your experience that the
4 various agency folks that show up and that -- is
5 that a collaborative environment, or is it a --
6 there's attendees and presenters?

7 A. Well, yeah, there's attendees and presenters
8 and instructors. I was one of among several
9 presenters that presented to the audience.

10 Q. Okay. Is there interaction amongst the
11 presenters and the attendees outside of the formal
12 setting of the presentations themselves?

13 A. Well, I'm sure there is, but I wasn't there
14 long enough for that to happen with me. I had lunch
15 with them, and then I had to get back on the road to
16 get back to --

17 Q. So there's not a cocktail hour or reception?

18 A. Oh, I'm sure there was. I wasn't involved in
19 it, though.

20 Q. Okay. I'm trying to find out about the ways
21 in which information is sort of communicated amongst
22 agencies at these conferences. Is it just a few
23 people stand up on the stage and give a presentation
24 and the audience listens, or is it that there's, you
25 know, side conversations going on or sort of small

1 groups that emerge? I'm just trying to get a
2 feeling for the larger context.

3 A. I think it depends on the nature of the
4 conference, the specific conference, the specific
5 association that hosts or sponsors the conference.
6 So it can happen with all of those things, and it
7 can happen with a combination of several of those
8 variables you just identified.

9 Q. Okay. Do you -- in this case you
10 identified -- you reviewed a lot of the sheriff's
11 department policies; is that correct?

12 A. Yes, sir.

13 Q. Okay. Bear with me for just a moment here
14 while I -- did you -- let's turn to your report.
15 Let's look at Opinion Number 1 beginning on page 7.

16 You identify here at the bottom of the
17 page continuing on to page 8 a set of -- you say, "I
18 have reviewed the following policies of CCSO." Let
19 me know when you're with me there.

20 A. I'm with you.

21 Q. Okay. I want to ask you about these policies
22 in a minute, but before we look at the specific
23 policies in -- as to -- in Chatham County Sheriff's
24 Office and the Chatham County detention center, I
25 want to ask you about the policy-making process

1 generally.

2 Is it -- is it fair to say that you've
3 expressed opinion elsewhere that policy making is a
4 feedback loop where the policies are initially, you
5 know, promulgated by an agency, but then those
6 policies have to be checked against how they're
7 actually implemented? It's a broad question and --

8 MR. PERKINS: Object to form.

9 THE WITNESS: Are you saying I said that in
10 my report or is that just my philosophy or opinion
11 based on that question?

12 BY MR. KUHLMAN:

13 Q. I'm asking whether -- is that a fair
14 statement of opinions you expressed elsewhere
15 outside of this report?

16 A. Fair.

17 Q. Okay. So is that a -- is it -- is that
18 because you can't just have a policy that exists in
19 isolation? Is that a fair statement?

20 A. Sure.

21 Q. Okay. So what is the process by which in
22 this ideal model that you've written about elsewhere
23 of developing a policy and then getting feedback on
24 the implementation of that policy? Can you describe
25 that process to me, please?

1 A. How I see it generally in the correctional or
2 law enforcement agencies?

3 Q. Yes.

4 A. There's a lot of catalysts. There are a lot
5 of variables and things that emerge from that.
6 First we want to make sure that policy reflects
7 various state standards, and that really helps drive
8 the policy.

9 Secondly, what helps drive policies are
10 particularly US constitutional case decisions and
11 then state court decisions and then respective
12 circuit court decisions that -- like, for example,
13 we're in the Eleventh Circuit, so if I'm a jail
14 sheriff or jail administrator, I should be keeping
15 attune to not only what's going on in the state but
16 the federal circuits and the US Supreme Court as
17 well.

18 I have got to think about operational aspects
19 of how officers are to perform their duties, so that
20 flows into the policy. But once a policy is finally
21 developed -- and I have always advocated -- and some
22 places do it differently. It doesn't mean it's the
23 right way. But I have always advocated to have a
24 committee, particularly when we talk about use of
25 force, have a training instructor, have line level

1 officers. If you have unions that are a part of a
2 particular agency, then the union should have
3 representation and input and administration should
4 have somebody. So it's a -- to me it's a policy
5 committee. It's policy development by committee.

6 Once that's done and everybody has a chance
7 to have input, we shake it out. It's going to take
8 several times for additions and revisions to that
9 before we actually make it official. Then an
10 officer should be trained on it. Everybody should
11 be trained on the policy. And once that training
12 has been provided, then we'll start implementing it
13 out into the jail, the prison, out on the street.
14 Supervisors are responsible for ensuring that
15 officers follow the policy, and then officers need
16 to be held accountable and officers need to ensure
17 that they're following policy.

18 And the thing about writing policy, it's not
19 an easy thing to do. You have to write it in such a
20 way that reflects various standards that you want to
21 incorporate in the law but at the same time
22 understanding that you can't write a policy for
23 every given confrontation or situation an officer
24 may encounter. So discretion has to be integrated
25 into the policy. Guidelines directing -- at the

1 same time letting the officer make decisions as
2 certain variables come up that you just can't codify
3 in a policy.

4 Q. So please correct me if I'm wrong, but it's
5 my -- is it fair to say that much of your work,
6 whether -- setting aside working as an -- providing
7 expert opinions but your consulting work, the
8 training of these agencies, your -- I think you said
9 much earlier this morning that not necessarily --
10 it's hard for the agencies themselves to necessarily
11 keep up with these developments. So you see
12 yourself as someone who goes in and provides the
13 latest information and helps them update and
14 revise -- helps an agency, a corrections agency, for
15 example, update and revise its policy to reflect the
16 current state of the law and conditions; correct?

17 A. I would agree with that.

18 Q. Okay. And is it also part of your role in
19 that capacity to help the agency to determine
20 whether or not its supervisors are checking back on
21 the policy or -- just a minute ago you described it
22 as the supervisors have a responsibility to see that
23 the policies are, in fact, being implemented; is
24 that correct?

25 A. That's true. I would agree with that.

1 Q. Okay. And so in this -- in this general
2 context -- excuse me. Strike that.

3 In this ideal circumstance, a committee of
4 upper management folks within a corrections agency
5 get together, including some of the trainers, and
6 develop a policy. The policy is implemented, and
7 then the supervisors are responsible for checking to
8 see that the other officers are, in fact, adhering
9 to the policy; is that correct?

10 A. Correct. And I would add another dimension
11 just thinking off-the-cuff as responding. But, you
12 know, in terms of that committee, once a policy --
13 the legal counsel for that entity should be part of
14 that, and/or at least at the minimum the policy
15 should be run by legal counsel, even the risk
16 manager in many cases, to get their input and to
17 ensure that the policy is actually within the
18 constitution and/or the state law itself.

19 Q. Sure. So let's -- let's assume for a second
20 that the policy developed was adequate based --
21 whether it met the constitutional standards, the
22 state law standards or any regulations, et cetera.
23 You've got -- you've got yourself this adequate
24 policy; right?

25 A. Yeah. And I would agree with that word,

1 adequate, adequate policy.

2 Q. Okay. So you have got an adequate policy,
3 but is it -- is it -- you would also agree that it's
4 not sufficient to simply just get this policy and go
5 put it on the shelf somewhere; correct?

6 A. Yes, I would agree with that.

7 Q. The policy is really meaningless if it's a
8 little more than just some paper in a book in an
9 office somewhere; correct?

10 A. Well, I don't know if it's meaningless, but
11 it's certainly not being implemented if it's just
12 stored away on a shelf somewhere.

13 Q. You've talked a lot about agency liability.
14 You've written about agency liability. You've
15 looked at various agencies. You have examined it.
16 You have tried to help agencies avoid liability;
17 right?

18 A. Correct.

19 Q. Okay. From that perspective of managing risk
20 and evaluating liability, would you be more
21 concerned or less concerned by an agency that took
22 its policies and simply put it on a shelf and then
23 ran an operation that had very little connection to
24 the policies?

25 A. Yeah, I would agree with that. I would be

1 concerned about that.

2 Q. That would be a concern to you; right?

3 A. Oh, yes.

4 Q. Because there wouldn't be any way to describe
5 or ensure that the constitutionally adequate
6 policies that are on the shelf are, in fact,
7 actually being implemented on the line at the line
8 level?

9 A. That's correct.

10 Q. Okay. Assume for me for a second that there
11 is a break in the chain of command, so to speak,
12 that the committee that develops a policy puts it
13 together. The line level officers are over here,
14 and then in the middle where you would have maybe
15 a -- maybe not a watch commander but a shift
16 supervisor, these sort of middle -- this middle rung
17 of the chain of command. Is that -- do you
18 understand what I mean by a middle rung of the chain
19 of command?

20 A. Yes, I do.

21 Q. Okay. If they were -- if that middle rung
22 was distracted or otherwise preoccupied with other
23 activities that didn't involve the checking on the
24 line level officers that you described to me just a
25 minute ago as an essential part of the process,

1 would you see that as a problem?

2 MR. PERKINS: Object to form.

3 THE WITNESS: Do you mean on one shift or for
4 ten years?

5 BY MR. KUHLMAN:

6 Q. Well, is it a problem for one shift?

7 A. If it's just one day, that's not a problem to
8 me. But, I mean, if this is a regular practice over
9 years, that could be a problem. But if you're
10 talking about just distracted for a shift or a week
11 or very, very short period of time, that's not a
12 problem. I'm thinking -- I'm thinking
13 longitudinally.

14 Q. Sure.

15 A. That would perhaps be -- could pose or create
16 a significant problem.

17 Q. So help me bracket that for a second, because
18 you said on the one hand ten years and one day.
19 Those are the outside limits. Let's bring that down
20 just a little bit if you can. I think you said a
21 couple of shifts or a week, that wouldn't -- you
22 wouldn't see a problem with that; correct?

23 A. Yeah. Because when you say distracted, I'm
24 thinking like, well, okay, we had a hurricane last
25 week. So that may -- that could go on for a month.

1 That doesn't mean we're attending to everything in
2 that policy that particular -- during that quote, as
3 you put it, distraction or some emergency or some
4 fire. You burn the jail down or something of that
5 nature.

6 So the way I'm tracking with you is there's
7 always some nuances in there that we have to think
8 about. Some distraction could be a whole host of
9 months that we're not going to attend to that
10 because of the nature of circumstances that dictate
11 that.

12 Q. If, let's say, for six months the supervisors
13 were not checking the work of the line level
14 officers against the policy, would that six-month
15 period be a problem for you?

16 MR. PERKINS: Object to form.

17 MR. KUHLMAN: This is not -- this is a
18 hypothetical. What's wrong with the question?

19 MR. PERKINS: The problem is -- the word
20 "problem" is what I'm having -- I keep objecting
21 to the form for. It just seems like a very vague
22 term, but, anyway, go ahead.

23 BY MR. KUHLMAN:

24 Q. Do you understand the question, Dr. Ross?

25 A. I sort of do. Are you saying within

1 180 days, six months -- I guess it's not something
2 that in my expertise or impression, based on your
3 hypothetical as you have phrased it, is that we may
4 not -- a supervisor may not be constantly checking
5 on in terms of how often is there contact? How big
6 of an agency are we talking about? What's the
7 interaction with that supervisor? It depends on the
8 agency's evaluation process, their accountability
9 process, their evaluation mechanisms they put into
10 place. So if a hypothetical, then I have to give
11 you variables that I can't really quantify based on
12 your hypothetical.

13 Q. I appreciate your reluctance to come into my
14 universe. I will try to be more precise or narrow
15 in my question.

16 Let's say -- okay. Now, assume for me for a
17 minute that one of the trainers who is responsible
18 for taking the policy off the shelf and getting the
19 line level officers into a class and saying this is
20 what -- this is how we do things at this facility --
21 are you with me so far?

22 A. Sure.

23 Q. Let's say -- assume for a second that that
24 trainer is unhappy with or dissatisfied by the
25 particular policy that he has to pull from the

1 shelf, and so instead of pulling from the shelf,
2 he's been to a conference. He comes back from the
3 conference, and he pulls out a policy that he
4 brought back from the conference and he just uses
5 that in his training instead of the one on the
6 shelf. Do you see any problems with that?

7 A. Well, unless his administrator or his
8 supervisor said, "We don't want you to train what
9 you've learned at the conference. We only want you
10 to train" -- I don't know what his directive is.

11 Q. Right.

12 A. It may just be in this world of hypotheticals
13 that the supervisor said, "Please share with other
14 officers what you learned at that conference." It
15 doesn't mean that he's avoiding or prohibiting the
16 use of the policies on the shelf. He's only sharing
17 with them what he learned at the conference that may
18 be part of a policy that they talked about at the
19 conference.

20 Q. But isn't it fair to say that when you start
21 to do this sort of ad hoc modification, that it
22 creates a problem -- it creates inconsistent results
23 for the line level officers? Because, let's say,
24 for example, only a small percentage or even, you
25 know, a modest percentage of the line level officers

1 attended the training with this new -- with this new
2 policy. Isn't that going to create an inconsistent
3 outcome for the officers who are trained under that
4 policy versus the officers who think they're subject
5 to the policy that's back on the shelf?

6 A. No, not necessarily in my mind. It's only
7 what the executive administrator told him to train.
8 He's only doing what the purported objective of his
9 training was to do.

10 Q. But in my hypothetical the trainer is not
11 responding to a directive. The trainer is acting on
12 his own.

13 A. Okay. And you have to give me more than
14 that.

15 Q. Well, it's -- the trainer is not saying --
16 it's not that the jail administrator -- in my
17 hypothetical the jail -- it's not the case that the
18 jail administrator went to the trainer and said, "We
19 don't -- we want you to use a different method, and
20 here's the method that you use. Go train
21 everybody." That's -- those are not the facts in my
22 hypothetical. Okay?

23 A. Well, it's not my -- I don't follow those
24 facts very well. That doesn't seem to -- it might
25 be in a fantasy hypothetical, but in reality --

1 that's where I'm having a hard time --

2 Q. Okay.

3 A. -- syncing up to that hypothetical.

4 Q. Okay.

5 A. Because if I -- let me just elaborate. If
6 I'm the administrator allowing you to have time to
7 train, I want to know what you're training. I'm not
8 just going to go say, "Oh, next Tuesday at 5:00,
9 Bob, go out here and start training what you
10 learned."

11 I want to know what you trained -- what you
12 learned and what you're going to train so I can
13 agree or not agree with it. I don't know very many
14 agencies even in a hypothetical that are just going
15 to let someone just arbitrarily come in and train
16 someone -- train other officers without having
17 some -- at least some minimal level of oversight
18 about what they're communicating or training or
19 teaching.

20 Q. Well, wouldn't it be difficult to oversee
21 that training if the folks who are responsible for
22 overseeing the training were, to use my earlier
23 phrase, distracted by other activities?

24 A. Possibly.

25 Q. Let's say, for example, that the jail

1 administrator was working on an expansion project at
2 the facility and not involved in the day-to-day
3 operations of the corrections program.

4 A. But there could be other supervisors.

5 Q. I understand that.

6 A. So the jail administrator is not just going
7 to solely be on this project. Maybe that's his or
8 her function, but there's other people he can
9 delegate that to.

10 Q. Okay. Turning to pages 7 and 8 again. These
11 one, two, three, four, five, six, seven, eight,
12 nine, ten, eleven, twelve, thirteen policies that
13 you have got listed here -- are you with me?

14 A. Yes, sir.

15 Q. Those policies, do you -- you reviewed each
16 one of those; correct?

17 A. Yes, sir.

18 Q. Okay. They -- excuse me for just a minute.

19 It's your opinion as we sit here today that
20 those policies, if they were sitting on the shelf,
21 were adequate?

22 A. I'm saying to you today that regardless of
23 where they're sitting on the shelf they're adequate.

24 Q. I understand that. I'm trying to break this
25 up a little bit.

1 A. Okay.

2 Q. Tell me why that's a problem.

3 A. Well, is that a hypothetical? Because we
4 went from a hypothetical to actual existing
5 policies, and these policies, in my impression,
6 weren't sitting on a shelf. So they were not a
7 problem, and they were adequate and they were
8 functional and operational, and officers testified
9 to that.

10 Q. Okay. So, again, my question is, if these
11 policies were sitting on a shelf, would they be
12 themselves adequate?

13 A. Sure.

14 Q. Okay. You've added on to that to say in your
15 review of this that these policies weren't just
16 simply sitting on a shelf, that they were involved
17 in this -- they were part of this feedback loop that
18 we have previously described?

19 A. I don't know if I would call it a feedback
20 loop.

21 Q. Okay.

22 A. They were certainly trained to -- and there
23 was evidence in the testimony that I read that they
24 were actually followed and were applied to to this
25 case.

1 Q. Okay. And what facts do you have that
2 support that conclusion?

3 A. Over 2,000 pages of depositions and reports
4 and investigations and the officers' testimony and
5 how they started off receiving Mr. Ajibade into the
6 facility and his housing and his placement and the
7 security that they provided and the practices that
8 they were experienced and had prior experience and
9 history with of receiving other detainees into the
10 facility. The videotape confirms and shows the
11 practice which underscores what these policies are
12 directing the officers to do.

13 Q. Okay. Do you need all 2,000 pages to reach
14 that conclusion?

15 A. It may be more than 2,000. I didn't really
16 count. I have two Xerox boxes and two notebooks of
17 documents, plus videos, plus cases I looked at,
18 deposition testimony. So I have reviewed everything
19 that's in this report, and it did help me to come to
20 the -- my conclusions, opinions and my impressions.

21 Q. Okay. I think the number is more like 5,000
22 but --

23 A. I'm not going to dispute that.

24 Q. Okay. And you have got about 30 hours I
25 think what you told us earlier; correct?

1 A. Just reading.

2 Q. Yeah. Okay. Is this your book?

3 A. Yes, sir.

4 Q. Okay.

5 A. It's mine and my coauthor, yes, as well as
6 contributing authors.

7 Q. Okay.

8 A. Thanks for buying it.

9 Q. Sure. I have shown a copy of "Sudden Deaths
10 in Custody" showing as editors yourself and
11 Dr. Khan; correct?

12 A. Yes, sir.

13 Q. Okay. I'm not going to -- we're not going to
14 mark the whole book, but if you could just tell me
15 in broad terms, you didn't write every chapter in
16 the book?

17 A. Oh, no.

18 Q. Okay. Which of the chapters, if you recall,
19 did you -- were you the author or coauthor of?

20 A. If you look at the table of contents, it
21 spells it out. Without -- it's 11 years old, so if
22 you give me the table of contents, I can show you.

23 Q. I would be happy to.

24 A. It's got my name right there.

25 Q. So I see Chapter 1.

1 A. Chapter 1 I wrote. Chapter 9 I wrote, 11 and
2 12.

3 Q. Okay.

4 A. And then obviously edited every chapter,
5 reviewed every chapter, made some recommendations,
6 along with Dr. Chan, of the other chapters.

7 Q. So in the 11 years, I think, since you wrote
8 these chapters and edited the chapters that you did,
9 in fact, author, is there anything that you want to
10 tell me today that would change the positions that
11 you have taken in -- particularly in Chapters 1, 9
12 and 12?

13 MR. PERKINS: Object to form.

14 THE WITNESS: Sure.

15 BY MR. KUHLMAN:

16 Q. Okay. I want to show you -- let's mark this
17 as 6. This is Ross 6.

18 - - -

19 (Exhibit 6, Chapter 12, Administrative
20 Implications, from book "Sudden Deaths in Custody," was
21 marked for identification.)

22 - - -

23 BY MR. KUHLMAN:

24 Q. Can you tell me what the title of this
25 document appears to be?

1 A. It's Chapter 12, Administrative Implications,
2 a chapter of the book that's under questioning at
3 the moment.

4 MR. KUHLMAN: Let's go off the record for
5 just a second.

6 (Discussion off the record.)

7 MR. KUHLMAN: We can go back on.

8 BY MR. KUHLMAN:

9 Q. Dr. Ross, could you give us -- I've shown you
10 Chapter 12. Could you take a look through there and
11 tell me if there's anything that indicates this is
12 not a true and accurate copy of the chapter as it
13 appears in the print copy?

14 A. Yeah, it appears to -- it appears to be,
15 yeah. Short on copying -- it didn't get some of the
16 pages, just about lining it up on the copying
17 machine. Other than that, yeah.

18 Q. Okay.

19 A. It looks like it.

20 Q. Can you help us -- and plaintiffs will bear
21 all responsibility for getting a couple of these
22 page numbers cut off.

23 Can you help us walk through -- on page 204
24 you have got here -- it says, "Generally, incidents
25 of sudden in-custody deaths revolve around four

1 broad areas."

2 Can you tell me about those four broad areas?

3 A. You want me to just read them or, I mean,
4 expand and explain on them? Which basically that's
5 what's contained in the chapter.

6 Q. Right. And I'm going to ask you questions
7 about the chapter, but just help us lay a little bit
8 of the landscape here of what we're about to
9 encounter.

10 A. Okay. And going back to your earlier
11 question is there certain things -- there are some
12 things that have more research and more studies that
13 have occurred since we wrote this book that -- until
14 the present date of even sitting here. So, yeah,
15 there's things that -- and that's why we wrote the
16 second book. Nonetheless, it just came out in
17 July of 2017.

18 The degree and type of force/restraint
19 measures, a sudden in-custody death now more
20 commonly referred to as an arrest-related death is
21 normally -- we're not talking about a pursuit death
22 and police chase. We're not talking about
23 officer-involved shooting. We're talking about
24 cases that stem from use-of-force measures,
25 use-of-force control. So that's number one. It

1 stems from we have a violent, combative subject who
2 needs to be controlled and restrained and
3 subsequently dies after a period of time fighting
4 against being controlled and restrained by officers.

5 Secondly, the medical and psychological
6 factors associated with the death of the subject,
7 that could impose or include the medical condition
8 of the subject, preexisting conditions, all internal
9 organs, brain deficiency, brain abnormalities, organ
10 failure, on and on and on, psychological factors,
11 mental health, refers to mental health concerns.

12 And in number two that also could respond to
13 or correlate to substance abuse histories of the
14 subject. It has created and contributed to their
15 medical condition or their psychological condition.
16 The failure to take prescribed medication either for
17 medical issues and/or for mental health issues. So
18 there's a lot of things that go under number two,
19 which I know we kind of want to keep this deposition
20 at least to about -- so -- but, I mean -- and so in
21 a somewhat quasi routine time period here.

22 Three, could be medical care issues provided
23 or requested by responding officers. In other
24 words, once we have a person restrained and
25 controlled, what subsequent medical care issues

1 should we be providing to that individual based on
2 any injuries that are observable or apparent or
3 problems that emerge after medical -- medical
4 conditions that may emerge after the restraint.

5 And then often sometimes it could include the
6 method used for transporting the subject, whether we
7 transport -- whether the officers transported
8 somebody in the back of a police patrol car or other
9 type of police vehicle and/or ambulance/EMS.

10 Q. Thank you. Again earlier you told us this is
11 one of the materials -- part of your scholarship or
12 part of your writing that you relied on or that
13 informed your opinions in this case; correct?

14 A. I don't think I said that.

15 Q. Well, I asked you which pieces of --

16 A. Oh, did I? Yeah. Book, book. I gotcha.
17 I'm with you. I'm sorry. I'm sorry. I apologize.
18 Yeah. Yes.

19 Q. Okay. You circled the whole book, but is it
20 fair to say that this chapter out of the book is
21 also -- is part of the book?

22 A. This is chapter 12 of the book.

23 Q. Yeah.

24 A. But to answer your question, as I reviewed
25 all of the, now knowing, 5 ,000 pages and sitting

1 down and writing and typing up my report, I can't
2 say that I thought about Chapter 12 or any chapter
3 in that book as I sit down to write my report.

4 Q. Well, when I read Chapter 12, it seemed like
5 it would have been something that guided you in your
6 opinions. If I'm mistaken in that, please tell me
7 so, and we'll move on. But it seems like there's a
8 lot of material in here that is pertinent to the
9 facts in this particular case?

10 A. I would agree with your assessment it's
11 pertinent to the facts of the case, but where I
12 disagree is that I didn't have this chapter open on
13 page 209 to sit down and go, okay, on this page and
14 this section I'm reading -- okay. And I'm writing
15 and typing based on what I'm reading.

16 Q. Okay.

17 A. It's the collective -- you have to understand
18 I have been studying this stuff since 1988. So when
19 I sit down to write an opinion based on the case of
20 this nature, I don't -- I have it in my head. So
21 it's not that I have a particular book or our books
22 on a particular page as I'm putting together my
23 opinion and writing it and structuring it on the
24 computer from the report, if that makes sense.

25 Q. It does. There's this great quote from the

1 author Umberto Eco, who passed away recently, who
2 says -- you know, he said if he wants to write a
3 novel, he takes all this information, read all of
4 it, and then he would shred it and sit down with a
5 clean sheet of paper. So I can appreciate that you
6 didn't necessarily have it in front of you. But I
7 think what you have told me -- and I want you to --
8 I want to be clear about this. You have told me
9 that it does -- as part of your body of your life's
10 work, this has informed the opinions that you
11 express today.

12 A. Oh, I would -- yes. The whole book, not just
13 this chapter.

14 Q. Okay. Fair. We can go through the whole
15 book if y'all want.

16 A. That's up to you.

17 Q. Can you help me understand the stages that
18 you describe of a risk management approach here? We
19 have got stage 1, incident analysis; stage 2, policy
20 development; stage 3, risk control, and so on and so
21 forth.

22 A. Well, a lot of my work over the years -- and
23 what I mean by work, experience and writings and
24 trainings and consulting and providing technical
25 services to agencies. It's kind of based through a

1 prism of risk management, through a lens of risk
2 management. So I approach a lot of topics, this one
3 included, from that prism or from that lens or from
4 that risk management perspective.

5 So in order to kind of walk administrators or
6 the reader through that, I start down how to analyze
7 the situation that leads us then into, well, if we
8 have this incident and these problems, what emerges
9 as some of the significant variables or factors that
10 could lead us to policy development, training,
11 implementation, monitoring, so forth.

12 Q. Sure. So on page 205, for example, you
13 wrote, "Moreover, administrators are encouraged to
14 analyze their own agency arrest, incident records,
15 use-of-force reports, and local community hospital
16 emergency room records in order to determine the
17 frequency of contact with subjects who are under the
18 influence of various substances or who exhibit
19 mental impairment."

20 Do you see where I'm at?

21 A. Yes, sir.

22 Q. Do you have any reason to qualify that
23 encouragement that you gave 11 years ago to
24 agencies --

25 A. No.

1 Q. -- today?

2 A. No, sir.

3 Q. Okay. Turning to stage 2, developer --
4 once -- is it fair to say that stage 2 is predicated
5 upon a comprehensive incident analysis?

6 A. Yes. That's kind of the recommended -- you
7 have done these review of incidents and what
8 emerged -- what themes are common trends are
9 patterns that can help guide policy development.

10 Q. Because you really can't change the policy if
11 you don't have any data to make your determinations
12 from.

13 A. Well, I think you can. I'm encouraging
14 others to do it a little different way. But, yeah,
15 you could. Depending on what the policy is, that
16 could happen. I'm not saying that's the best way,
17 but I'm saying -- and I'm not saying this is the
18 only way. I'm saying this is one way to do it, and
19 I would encourage -- and I have trained in this to
20 sheriffs and chiefs and administrators this is
21 another way of thinking about doing that.

22 Q. But, again, this is your model; right?

23 A. Yes.

24 Q. You're not -- you're not regurgitating
25 somebody's else's model. This is something you have

1 clearly spent a bunch of time thinking about and
2 developing; right?

3 A. Correct. But I'm not going to fault
4 somebody, if they have another way that they do it,
5 to say that you didn't follow this, so, therefore,
6 that's an inadequate policy or system.

7 Q. Thank you for the clarification.

8 Stage 3, what is -- how do you select a risk
9 control strategy?

10 A. Well, basically you have those as I outline
11 or identify in sentence two. This comes from risk
12 management principles, concepts, the whole idea of
13 risk management. So these are things I didn't just
14 think of, but these are ways that risk managers, any
15 type of occupation suggest that these are the ways
16 to attack or to prevent or address certain types of
17 risks. So you have to then pick the ones that are
18 most, based on your risk analysis of the incident,
19 what you can live with in your agency that best fits
20 the purpose, the mission, objective and core
21 objective of that particular agency.

22 Q. What's risk transfer?

23 A. Transferring the risk is stopping something
24 and transferring to some other entity so that you're
25 not engaged in that.

1 Q. What did --

2 A. For example --

3 Q. Go ahead.

4 A. Some police departments -- or even stopping a
5 particular -- some police departments in the past --
6 and you still see it in the south particularly -- is
7 provide escorts for funerals going from the funeral
8 facility, parlor, for lack of a better building, to
9 the cemetery. And oftentimes when motorcyclists,
10 motorcycle units for police departments or patrol
11 units go in an intersection, they have been hit and
12 killed because citizens are disregarding and blowing
13 right through. So some -- one way to transfer that
14 risk or stop that risk is stop the funeral escorts,
15 which many departments in the north and unions have
16 stopped that.

17 So that could be one way of doing that or
18 transferring it -- here's one in corrections.
19 Instead of hiring perhaps your own medical doctor,
20 you transfer the risk and hire an outside contractor
21 for health care.

22 Q. Okay. So that would transfer some of the
23 risk associated with medical claims that would be
24 brought by detainees or arrestees --

25 A. Correct.

1 Q. -- to the vendor as opposed to the --

2 A. To the -- exactly.

3 Q. Okay. Is it -- in that calculous, is it your
4 opinion that a sheriff or a warden can shift
5 100 percent of the risk to the vendor in that
6 example you just shared with me?

7 A. It depends on the contract and the state law
8 and a whole host of things.

9 Q. So there's no constitutional prohibition in
10 your mind against a sheriff shifting 100 percent of
11 his risk to the vendor?

12 A. I'm not sure about that. I couldn't answer
13 that precisely, because, again, that depends on
14 state law.

15 Q. What is segregation of resources?

16 A. Having more -- duplicate types of equipment.
17 So if you have a hurricane and one generator goes
18 out, you don't just say, "Okay, we're out," or
19 transmissions or radios go out. You have duplicate
20 of services, replication of that. In case one goes
21 down, instead of having two or three cars, you have
22 a fleet of numerous cars of equipment, radio, that
23 type of thing, devices.

24 Q. Okay. I want to ask you about the last two
25 stages here very briefly. Implementation of the

1 risk strategies. This, again, is something you told
2 me earlier. Supervisors overseeing the execution of
3 the report of the approach and enforcing the
4 strategy -- and enforcing that the strategy was
5 correctly implemented.

6 Is it fair to say that this stage 4 is wholly
7 dependent on the effectiveness of the supervisors in
8 executing -- overseeing and enforcing the approach?

9 A. I would agree with you in part. I wouldn't
10 say solely because the supervisor can't -- I would
11 agree that there is some accountability on the part
12 of the supervisor to ensure his or her subordinates
13 are following a policy. But if I'm on vacation --
14 and I have trained them very well and I'm a
15 supervisor. But I'm on vacation and Officer X
16 decides to go up and take a baton and just hit
17 somebody upside the head against a policy, that's
18 where I would depart with you with that particular
19 type of question.

20 Q. What if the supervisor is not on vacation but
21 is standing right there next to the subordinate?

22 A. Possibly. You have to look at the
23 circumstances, but, yeah, possibly.

24 Q. Okay. That would be -- it's possible in your
25 mind for that to be an abdication of the

1 responsibility that you have described here in the
2 orientation?

3 A. If the supervisor is fully aware, cognitive
4 of what's going on, yes, that possibly could be a
5 problem, yes.

6 Q. Okay. And, finally, Number 5, monitoring and
7 assessing risk control. This is -- who is
8 responsible for the monitoring in this stage of the
9 process?

10 A. Well, it depends on how the agency would take
11 this model on and then assign it. It could be a
12 compliance officer. It could be a sergeant. It
13 could be a civilian they have hired to do this. It
14 could be a whole host of things.

15 Q. Based on your review of 5,000 pages in this
16 case and presumably information that you would have
17 developed about how Chatham County Sheriff's Office
18 has operated, who do you think in that model would
19 have been responsible -- had Chatham County been
20 using your model, who would have been the monitor
21 that you describe here in stage 5?

22 A. Using this model hypothetically?

23 Q. Yes.

24 A. All right. It could have been perhaps the
25 jail administrator. It could have been somebody

1 even outside of corrections. It could have been --
2 I can't remember her name. Colon, I believe.

3 Q. Melissa Kohne?

4 A. Yes.

5 Q. K-o-h-n-e?

6 A. Yes. She was some administrator within the
7 corrections bureau. So someone like that position
8 could have recorded and tracked and assessed and
9 monitored all sorts of things in the jail.

10 Q. And what are some -- what are some of the
11 monitoring instruments -- I think you used
12 instruments in your own research from the 17
13 agencies for your most recent piece.

14 What is -- what are some of the instruments
15 that you would have recommended for monitoring in a
16 circumstance at a place like Chatham County?

17 A. They already have it set up. They have a
18 report system that I think is two to three pages.
19 They had figures and they had checkoff boxes in
20 there. So they could have taken that, and someone
21 who has perhaps computer technology experience and
22 education and talent could have -- and put that in
23 and put in fields and then taken it from the
24 incident report or taken it right off of the
25 computer, because now we get a much more

1 sophisticated yearly, monthly, whatever to track
2 those reports.

3 Q. Right. You're talking -- are you referring
4 here to the incident -- the use-of-force incident
5 form?

6 A. Yes.

7 Q. Okay. I think -- is it fair to say that you
8 have written that the use-of-force incident form
9 should be completed by all officers who participate
10 in a particular use of force; correct?

11 A. Depends on --

12 Q. Go ahead.

13 A. When you say "all," it depends on how -- if
14 they were standing there, perhaps not. But if they
15 touch someone, perhaps. Assisted in grabbing an arm
16 to secure a handcuff, in that regard, whatever their
17 level was. If it was really -- it's hard to
18 explain. Centrally involved there should be a
19 report.

20 Q. Okay. Let me help you try to narrow it down
21 a little bit.

22 Let's say that -- assume for me that you have
23 got a situation where there's three or four officers
24 involved, and it's not three or four officers
25 standing around but three or four officers actively

1 involved in the restraint of the detainee or the
2 application of the use of force. Is it sufficient
3 in your mind for the -- for only one of those
4 officers to complete the incident use-of-force form
5 in detail or do all of those officers need to do it?

6 A. I think one could do it in detail, but it
7 kind of varies because some agencies require all and
8 some say the primary officer and get information
9 from Fred and Bobby and Sue and put all of that
10 collectively with that officer in that particular
11 report. So I have -- it can be either way.

12 Q. Has it been your experience that individual
13 officers who participate in use-of-force incidents
14 may have some reluctance to fairly characterize or
15 accurately report the information on the form for
16 fear of some disciplinary action?

17 A. No, not in my experience.

18 Q. Officers are 100 percent transparent in their
19 reporting form?

20 A. I didn't say that.

21 Q. Okay.

22 A. You said reluctant.

23 Q. Okay. So where is the space in between my
24 question and your --

25 A. Well, I think what happens from time to time

1 is we have better report writers than we have
2 others, and recollection of events may be different.
3 So you're going to see discrepancies and different
4 perspectives and observations and so forth and
5 interpretation and things coming in at certain
6 different times than an officer who was there
7 throughout the process, so, no. I think there is
8 some reluctance, and, yeah, they're going to review
9 obviously. So there's that potential that they may
10 not write it up properly, so they would get extra
11 evaluation or questions of assessment by a
12 supervisor. That's possible. Sure.

13 Q. Turn with me to 215 in the chapter here, Item
14 Number 13.

15 A. Okay.

16 Q. Reporting use of force. When you write,
17 "This section should explain that responding
18 officers will submit a report" -- do you see where
19 I'm at?

20 A. Yes.

21 Q. "This section should explain that responding
22 officers will submit a report indicating their
23 participation in the incident."

24 When you use the plural there officers, are
25 you saying that -- do you mean that to mean multiple

1 officers are going -- multiple officers or that
2 there are obviously multiple officers in an agency?

3 A. Multiple officers that respond to that
4 incident --

5 Q. Okay.

6 A. -- and that might have -- any level of
7 participation that they might have had in that
8 incident. So if I'm just directing traffic out on
9 the street, I may not -- because I didn't use force,
10 so I may not write a report. I responded. Well,
11 what we're trying to -- what I'm trying to encourage
12 folks to think about here is, unless you have some
13 other -- and this is where I say early on, I don't
14 know, 20, 30 minutes ago about, yeah, there's a lot
15 more information I write in this book. It's my
16 experience I'm finding more and more that sometimes
17 just the primary officer writes the report for the
18 collective benefit of the others that responded. So
19 sometimes you will get that in some cases. I see
20 that more in the law enforcement side than I do in
21 the jail side.

22 Q. So is it still your opinion today that the
23 better practice is for those officers which
24 responded or participated in the incident to all
25 complete a use-of-force incident form?

1 A. If it's possible. And I think that's a good
2 practice.

3 Q. Okay. Just one more question about -- from
4 Chapter 12 here. It's on the same page or same set
5 of pages, 215 section and 214.

6 In Number 10 you say here this section -- in
7 the monitoring and restraining section, "This
8 section should address monitoring procedures of
9 restrained subjects after a violent use-of-force
10 encounter."

11 A. Uh-huh. I'm with you.

12 Q. What is your opinion of -- as we sit here
13 today, what would constitute adequate monitoring of
14 a subject who has been subject to a use-of-force
15 incident?

16 A. Periodic assessment of conscious or
17 nonconscious behaviors of the subject.

18 Q. What's the periodic rate?

19 A. It depends.

20 Q. On what factors?

21 A. Well, if I'm out in the street or if I'm in
22 the jail. So that's a factor.

23 Q. Okay. I'm talking about -- I want to limit
24 my question to being in the jail.

25 A. All right. You didn't say that.

1 Q. I understand that. I'm trying to clarify.

2 A. Generally the practice is -- I have seen 30
3 minutes, every 30 minutes to every 15 minutes.

4 MR. KUHLMAN: Okay. We have got -- this
5 is -- if I steamroll over a break, y'all just let
6 me know, but I'm going to keep going unless you
7 tell me otherwise.

8 MR. PERKINS: Okay.

9 - - -

10 (Exhibit 7, Chapter 9, Case Analysis of
11 Restraint Deaths in Law Enforcement and Corrections,
12 from book "Forensic Science and Medicine: Sudden Deaths
13 in Custody," was marked for identification.)

14 - - -

15 MR. KUHLMAN: I'm going to show you what
16 we've marked as Ross 7.

17 For the folks on the phone, we're looking at
18 Chapter 9 if you have got an attachment.

19 What's the title of --

20 MR. FRISCH: I never got the attachment, but
21 press on.

22 BY MR. KUHLMAN:

23 Q. What's the title, Dr. Ross, of Chapter 9?

24 A. "Case Analysis of Restraint Deaths in Law
25 Enforcement and Corrections."

1 Q. Okay. And this is a chapter that you
2 authored?

3 A. Yes, sir.

4 Q. Okay. Did you have a coauthor on that
5 chapter?

6 A. No.

7 Q. Okay. Is there anything -- before we get
8 into it, just at first blush, is there anything
9 about this chapter that you think needs to be
10 updated or revised in the 11 years since you wrote
11 it?

12 A. Well, there's just more research that's been
13 published and conducted since we wrote -- I wrote
14 this chapter and we wrote the book.

15 Q. Okay.

16 A. There's additional information that could
17 be -- and there's more case law that's been decided,
18 thousands of cases in the last 11 years. So yeah.

19 Q. Sure. Turning to page -- I'm going to ask
20 you a series of questions related to Chapter 9 here,
21 and if at any point I say -- I ask you something
22 about this chapter that is out of date or you think
23 the particular thing we're talking about is out of
24 date based on this new research and cases, I would
25 appreciate it if you would just tell me that.

1 In the -- on page 140 at the top of the
2 page you write, "The death may result from reasons
3 not related to the physical aspects of the
4 confrontation or restraint. The death may have
5 occurred from cardiac ischemia or failure, drug
6 overdose or other underlying disease of the
7 subject."

8 Do you see that part?

9 A. Yes.

10 Q. Is there anything about those two sentences
11 that needs to be updated or revised in the 11 years
12 since you have written this piece?

13 A. No. I would say that that's what we're
14 finding now in the research and more medical
15 research. It's multifactor of these -- in addition
16 to other psychological conditions or medical
17 conditions --

18 Q. In the five -- okay.

19 A. -- of the subject.

20 Q. I'm sorry to interrupt.

21 A. That's all right.

22 Q. In the 5,000 pages that you reviewed in
23 getting ready for this case in order to express your
24 opinions, did you find any evidence of cardiac
25 ischemia or failure on the part of Mathew Ajibade?

1 A. Only what I read in the autopsy. I don't
2 remember cardiac ischemia --

3 Q. Okay.

4 A. -- as being listed.

5 Q. Okay. Do you see -- do you recall from your
6 review of those same 5,000 pages any evidence which
7 would suggest that Mr. Ajibade suffered from a drug
8 overdose?

9 A. No. But he was under the influence of
10 marijuana.

11 Q. Well, is under the influence of marijuana one
12 of the items to add to your serial list here on
13 page 140?

14 A. Now, if you're trying to play games -- all
15 right. Let's stop there. If you're taking one
16 sentence out of one book out of one chapter to try
17 to transfer and transplant it over to the facts of
18 this case, that's totally erroneous. So you're
19 taking one sentence. That's not all-encompassing.
20 There's other factors, like I said, multifactors
21 that could be added to that sentence. It's not just
22 those three or four variables that are listed there.
23 So this is an inappropriate question on your part
24 for me to try to take one sentence and then apply it
25 to a cascade of things that the autopsy showed in

1 this report or in this case.

2 Q. I didn't ask you to opine --

3 A. Yeah, you did. You asked me -- drug overdose
4 was not happening with Mr. Ajibade. Okay? But he
5 was under the influence of marijuana. So to try to
6 take this sentence and use it as a template over
7 this case, that's inappropriate.

8 Q. Respectfully, Dr. Ross, I didn't ask you that
9 question. I asked you --

10 A. Yes, you did. And an objection to your
11 question, you can't take this sentence and try to
12 make a full-blown template question over what
13 happened in that case. It's not related.

14 Q. I'm not asking a full-blown template question
15 and --

16 A. But you're going down that road of questions.
17 I see it, so --

18 Q. Dr. Ross, you're familiar --

19 A. -- you ask your questions, and I'll give you
20 my response.

21 Q. You're familiar with the procedure in a
22 deposition, and you're familiar with the unfortunate
23 fact that I have to ask the questions and you have
24 to do your best to answer the questions --

25 A. And I'm giving you my full response.

1 Q. -- and it doesn't -- unless your lawyer
2 instructs you not to -- and so far I don't believe I
3 have heard from Mr. Perkins an instruction not to
4 answer the question.

5 A. I'm not answering the question. I'm giving
6 you the response that you can't take one sentence
7 and one word and say because you wrote drug overdose
8 in this chapter and because your client didn't have
9 a drug overdose that somehow this is misleading or
10 not -- this is inaccurate. That's totally
11 erroneous, misstates all the facts in this case, and
12 as the deposition -- I have the right to counter
13 that. I know what the rules of depositions are.

14 Q. I appreciate the helpful clarification,
15 Dr. Ross. I didn't -- those conclusions are ones
16 that you have drawn on yourself. I have not drawn
17 those conclusions.

18 A. You said from the autopsy and evidence of
19 5,000 pages; correct?

20 Q. My question --

21 A. Is that the question?

22 Q. Well, we can read back the question.

23 A. Read it back then.

24 Q. Okay.

25 MR. PERKINS: You can have it read back, or I

1 suggest, Cameron, ask your questions and let's
2 just keep going.

3 THE WITNESS: And for the record, you don't
4 have to try to intimidate me with that stare.

5 BY MR. KUHLMAN:

6 Q. Dr. Ross, I --

7 A. I have been in numerous depositions. I know
8 how it works.

9 Q. Okay. I don't have any intention of
10 intimidating you.

11 A. You're trying.

12 Q. I'm --

13 A. That's my perception, and perception to me is
14 reality. And that's what's happening in this at
15 this point in the stage, and the judge can read it
16 and he can or she can make up their decision.

17 Q. Okay.

18 A. Badgering the witness.

19 Q. I'll ask the question again. Dr. Ross, in
20 your review of the 5,000 pages that you reviewed in
21 preparing to give the opinions in your report and
22 the opinions that you will provide at trial, did you
23 find any evidence that Mathew Ajibade's death was
24 caused by a drug overdose?

25 A. No, but he was under the influence of

1 marijuana, which contributed to his death according
2 to the medical examiner.

3 Q. Is there any evidence in the 5,000 pages that
4 you reviewed in preparing for this to express your
5 opinions in this case of some underlying disease
6 suffered by Mathew Ajibade which contributed to his
7 death?

8 A. I'd have to go back and look at the autopsy,
9 and to make it short for you, the autopsy was like
10 12 to 15 pages. So excluding the 5,000, let's just
11 deal with the autopsy.

12 Q. So, again, you relied -- in forming your
13 opinion, you relied on the incident reports, the
14 documents provided to you by Mr. Perkins, and the
15 autopsy, which we have just talked about; correct?

16 A. Correct.

17 Q. Okay. On page 145 under the heading of
18 "Methodology," the second paragraph.

19 A. I'm there.

20 Q. Okay. You describe 145 case reports of
21 sudden in-custody death after a violent restraint
22 incident.

23 A. Correct.

24 Q. Can you tell me about these data sources that
25 you describe here, these police detention,

1 litigation documents, et cetera. How did you come
2 to be in possession of these -- this data?

3 A. Some I served as an expert witness, and
4 others were given to me by other experts who have
5 served as experts or attorneys who had cases.

6 Q. Okay. Just to be clear, the cases in which
7 you served as an expert which you testified earlier
8 you never found a constitutional violation or
9 wrongdoing on the part of the police or the
10 corrections officers, those are the data in which
11 you used to collect and analyze for the findings
12 that you use in this book?

13 MR. PERKINS: Object to form. That's a
14 misstatement of his testimony.

15 THE WITNESS: That is some of the data that I
16 used. As I said, some attorneys gave me other
17 data that I was not retained as an expert witness.

18 BY MR. KUHLMAN:

19 Q. Who are those attorneys that --

20 A. Oh, gee, you're asking -- all over the
21 country.

22 Q. Well, how did these attorneys come to know
23 that you were going to conduct an analysis of sudden
24 in-custody deaths?

25 A. By reading the case I was able to contact

1 some of them throughout the country.

2 Q. How did you determine which cases you would
3 reach out to counsel to try and retrieve this data
4 in order to conduct your analysis?

5 A. How did I do it? Through the phone.

6 Q. No. I don't mean the mechanics of picking up
7 the phone and calling a lawyer. I'm asking about
8 how did you arrive at the 145 cases which you would
9 evaluate?

10 A. From a sample that was placed on -- either
11 the ones I knew that attorneys had that I had
12 association with in the past or was able to reach
13 out to them through a conference or association at a
14 training session or actually read the case and got
15 ahold of the file and said, "If you can send me the
16 information that's pertinent to what I want to look
17 at in this particular case, please send it to me."

18 Q. Okay. So it wasn't a randomized data
19 setting?

20 A. No.

21 Q. Do you have page 162 in that set?

22 A. Okay.

23 Q. The penultimate paragraph on the page begins
24 with the word "Fourth."

25 A. Okay.

1 Q. Do you find that statistically significant
2 that of the cases, deaths that you reviewed,
3 31 percent of those deaths involved a person who had
4 a history of mental illness, primarily a bipolar
5 disease known as manic depressive or schizophrenia?

6 A. Do I consider it significant?

7 Q. Yes.

8 A. It's almost -- it's a little less than
9 one-third, so statistically that would be right up
10 there.

11 Q. Are you aware of the incidents of this
12 diagnosis in the general population?

13 A. Yeah. I can't -- boy, I just presented a
14 training on that about two years ago, a year and a
15 half ago, from NAMI, National Association of Mental
16 Health. I can't remember the absolute figure or
17 percentage, but I'm familiar with it. I can track
18 it down real quick and look at it.

19 Q. If you would like to supplement that, you can
20 give it to Mr. Perkins and he can get it to us.

21 A. Sure.

22 Q. I appreciate that.

23 But is it accurate to say there is a higher
24 incidence of individuals who had a history of this
25 particular mental -- history of mental illness,

1 primarily bipolar disease known as manic-depressive
2 or schizophrenia, within the in-custody population
3 than in the general population, the non-custody --
4 the general population out in the world?

5 A. I don't follow your question.

6 Q. Is there a higher concentration of
7 individuals suffering from mental illness with --
8 inside the walls or outside the walls?

9 A. I don't think you can compare apples and
10 oranges there. I'm not talking about walls here.
11 I'm talking about out in the street primarily. I
12 would say this to your question, that police
13 probably have more contact and come across those who
14 are suffering from mental illness, and depending on
15 the demographics of their community makes a big
16 difference. So they come in contact -- there's a
17 high likelihood they're going to have more police
18 contact. Same like a doctor, an emergency room,
19 EMS. Very similar along the same line of thinking
20 or experience there.

21 Q. Okay. So if later when you go and look and
22 you find that the incidents of this -- of mental
23 illness, particularly bipolar, manic depressive,
24 schizophrenia, is lower in the general population
25 than it is in the population that you discovered,

1 the 31 percent, would it be appropriate to draw from
2 that conclusion that there is a higher incidence of
3 individuals suffering from these, from mental
4 illness, as described here?

5 MR. FRISCH: Objection to the form.

6 MR. PERKINS: Join.

7 THE WITNESS: You're going -- I can already
8 tell I can't understand that question. You need
9 to rephrase that.

10 BY MR. KUHLMAN:

11 Q. All right. Well, how about this, I will
12 reserve my question until you have a chance to
13 supplement your report with your findings about the
14 incidence of mental illness in the general
15 population.

16 MR. FRISCH: Object to form.

17 MR. PERKINS: Join.

18 MR. KUHLMAN: Thank you.

19 BY MR. KUHLMAN:

20 Q. Assume for me for a minute that 31 percent is
21 higher than the general population. Can you do that
22 for me?

23 A. I'm with you.

24 Q. Okay. If one -- if nearly one in three
25 individuals that law enforcement individuals

1 encounter on the street or in a corrections
2 environment is suffering from mental illness, is
3 that not all the more reason to screen for the
4 symptoms of mental illness presented by these
5 individuals?

6 MR. PERKINS: Object to form.

7 THE WITNESS: I don't know how you do that --

8 MR. FRISCH: Object to form of the question.

9 THE WITNESS: I don't know how you do that on
10 the street.

11 BY MR. KUHLMAN:

12 Q. What about in the corrections environment?

13 A. Down the road when you --

14 MR. FRISCH: Same objection.

15 MR. PERKINS: Join.

16 THE WITNESS: It's basically.

17 BY MR. KUHLMAN:

18 Q. These folks are going to enter their
19 objections and give you some instruction on how to
20 answer, but just try to ignore them for a second and
21 answer the question.

22 THE WITNESS: I don't think anyone's giving
23 me instructions how to answer. They're objecting.

24 MR. FRISCH: Hold on. Hold on. We're going
25 to make our objection. Nobody should ignore

1 anybody. Court Reporter, just take it down.

2 Let's just ask questions, do objections and keep
3 things moving.

4 MR. KUHLMAN: Can you read back the question?

5 THE COURT REPORTER: "QUESTION: What about
6 in the corrections environment?"

7 "ANSWER: Down the road when you" --

8 THE WITNESS: Screening-wise.

9 BY MR. KUHLMAN:

10 Q. Yes.

11 A. Let me go back to this number you keep
12 referring to.

13 Q. Okay.

14 A. This was in this small -- 145 small sample.
15 Okay, 31 percent. This is not all-inclusive of the
16 whole community, the whole population who are
17 mentally ill, because as I premised this off 30, 40
18 minutes ago, I have done studies -- there have been
19 other studies that have been done subsequent to this
20 that those who demonstrate the same symptomatology
21 of these who died who are 31 percent mentally ill or
22 had the parent history of mental illness. It wasn't
23 a bona fide -- see, none of these the officer in the
24 street or in corrections is going to say, "Yeah, I
25 know that guy's bipolar," on the street or in

1 corrections. They're not trained to do that. Or
2 their schizophrenia. That's why you go to the
3 reports later to get that information that's
4 post-death. A lot of things come up in an
5 investigation.

6 So officers on the street are not trained,
7 one, to screen individuals. They only go by
8 behaviors. Same with the corrections officer. So
9 with this data set you're talking about 31 percent
10 of the 145 demonstrated these and, based on case
11 reports and autopsies, investigations suffered from
12 mental illness. There's been subsequent studies
13 that show same symptomatologies with mentally ill
14 who had these symptomatologies who fought when
15 restrained and didn't die.

16 Q. Okay. Is there any reason that you have
17 right now to change your answer from earlier today
18 when we talked about how the conclusions are only as
19 good as the data upon which they're predicated?

20 A. No.

21 Q. Okay.

22 A. No. We're only talking -- to follow up, in
23 what you're reading on this particular chapter in
24 this particular page, again, is only representative
25 of that 145 data source, not in its entirety. And

1 there's other cases that show mentally ill or even
2 on drugs didn't die after an altercation of this,
3 and that's the whole premises. You can't just look
4 at half -- one side of the coin.

5 Q. Okay. I want to draw your attention to one
6 more passage from this chapter and then we will set
7 this book down for a time.

8 The last paragraph, the last full
9 paragraph on the page, the second sentence,
10 "Although there are numerous factors that must be
11 considered, prior to determining the cause or
12 contributing elements of death, this research
13 suggests there's strong evidence that drug abuse,
14 components of psychosis, and the condition of the
15 internal organs, particularly the heart, play
16 significant roles in an unexpected custodial death."

17 My question is, whether or not in the 11
18 years since you wrote this piece you have additional
19 evidence which would suggest a change or a variation
20 on the conclusion you reach in this chapter.

21 A. And I would answer that there is more support
22 for that statement now in the medical literature and
23 research, that supports those variables as well as
24 among others. And I think you're getting ready to
25 depose Dr. Mash and Dr. Wetli down the road;

1 correct.

2 Q. Have you talked with Dr. Mash or Dr. Wetli in
3 this case?

4 A. No, I have not. But I am saying those are
5 the experts that will -- can opine further than what
6 I can.

7 Q. I'm just asking you if you stand by the
8 statement here that --

9 A. Oh, I stand by the statement, and I say
10 there's more evidence to even support that sentence.

11 Q. Okay. I appreciate that.

12 Which of the -- which of the other experts
13 have you talked to about this case?

14 A. None.

15 Q. How did you come to find out who they were?

16 A. You. You informed me.

17 Q. I'm sorry?

18 A. You.

19 Q. I don't believe I said Dr. Wetli or
20 Dr. Mash's name.

21 A. You didn't say their name, but you didn't
22 have to. You put it on the witness list. Notice of
23 depositions. This is your document; right?

24 Q. You're right.

25 A. And right here it says John Peters on page 1,

1 Charles Wetli on page 2, just for the record, and on
2 page 3 Dr. Mash.

3 Q. You got me, Doctor. Thank you for that
4 clarification.

5 A. You're welcome.

6 MR. KUHLMAN: Y'all need a break?

7 THE COURT REPORTER: I could use a minute.

8 MR. KUHLMAN: Okay. Let's take five minutes.

9 (A recess was taken from 2:52 p.m. until 3:00 p.m.)

10 MR. KUHLMAN: We're back on.

11 BY MR. KUHLMAN:

12 Q. Dr. Ross, we're back over a short break here.
13 I want to ask you about some more paper here.

14 MR. KUHLMAN: What number are we on?

15 THE COURT REPORTER: We are on 8.

16 - - -

17 (Exhibit 8, Preliminary Opinions Report of
18 Darrell Ross in Marmelshtein v City of Southfield, was
19 marked for identification.)

20 - - -

21 BY MR. KUHLMAN:

22 Q. I'm going to show you what has been marked as
23 Ross 8, will be marked as Ross 8. Can you identify
24 that document for me?

25 A. Marmelshtein vs City of Southfield, et al.

1 Q. Okay. Is this -- earlier you mentioned the
2 Marmelshtein case, if I'm not mistaken when went we
3 through the list of your prior history?

4 A. Yes. I mentioned this is a law enforcement
5 case.

6 Q. Okay. Is there -- do you have any reason to
7 disagree that this is a true and accurate copy of
8 the report that you prepared, the opinion and report
9 that you prepared in that case?

10 A. Well, I would --

11 Q. Okay.

12 A. -- that I have not read it, and so I don't
13 know what you're handing me other than my name's on
14 it. I don't know if you have altered it in some way
15 or not without fully reading it, so...

16 Q. Well, go ahead and take a minute, if you
17 will, and take a look at it and see if -- I'm going
18 to represent to you that we got this off the
19 court -- we got this -- we received this from PACER,
20 from the court's public record, and we made no
21 modifications other than stapling the pages that
22 came out of our photo copier. But if you see
23 something that you think contradicts that, please
24 let me know.

25 A. No. All I'm saying is, again, you just gave

1 me a document with numerous pages with my name on it
2 that's stapled, and I'm just looking at it cursory.
3 It appears to be a report that I submitted. I'm
4 familiar with the case.

5 Q. Okay.

6 A. And I did -- as I articulated earlier, I did
7 write a report in this case.

8 Q. This is -- this is -- on the heading it says,
9 "Preliminary Opinions Report." Was there a -- was
10 there a subsequent or a final opinion report that
11 you provided in this case?

12 A. No. This was the only report that I
13 submitted.

14 Q. Okay. Thank you.

15 - - -

16 (Exhibit 9, Case Law Westfield v Kalamazoo
17 County and Mike Stadel, was marked for identification.)

18 - - -

19 BY MR. KUHLMAN:

20 Q. I'm going to show you what we have marked as
21 Ross 9. This we printed from Westlaw. If you look
22 at the middle of the top third of the page there in
23 bold I believe it's got the title. What is this
24 document?

25 A. It says -- you want me to read the whole

1 title?

2 Q. Just the bold part there under the --

3 A. "Preliminary opinions of the report of
4 Darrell Ross, PhD."

5 Q. Okay.

6 A. And just for the record, I don't structure my
7 reports this way, so this must be -- the court did
8 this in some way then, because that's not how I
9 structure my reports. And I don't put down at the
10 bottom Westlaw, Thomson Reuters, and so forth and so
11 on.

12 Q. How do you structure your reports?

13 A. As I do -- as I did in this case.

14 Q. Okay. You use a template when you start a
15 new report?

16 A. A template?

17 Q. Yeah, like a Microsoft -- do you use
18 Microsoft Word?

19 A. Yes.

20 Q. Do you open just a blank document?

21 A. Yes.

22 Q. Okay. It just so happens that you're
23 particular enough to make sure the formatting
24 matches every time?

25 A. Yes.

1 Q. Okay.

2 A. And usually I start off -- like the first --
3 like I did in this case, this report, at least up to
4 the first six items, and then from there, depending
5 on the facts and circumstances or the type of case
6 it is. So I have never seen this in this format.
7 This says 2014, and I'd have to go back and reread
8 this. But it's got my -- somehow it's got my name
9 on it, but, again, it's not the format in which I
10 use.

11 Q. Did you -- were you, in fact, retained as an
12 expert in the Westfield vs Kalamazoo County and Mike
13 Stadel case?

14 A. Yes. Again, I would have to review. I can't
15 recall the facts of all the circumstances of it, but
16 as far as I can -- yeah. It's on my witness list
17 that I submitted, so yes.

18 Q. Right. So if you -- as we sit here right
19 now, you don't -- you haven't been able to identify
20 anything which would suggest to you that this is
21 not, in fact, a copy of your report at least as
22 processed by the court or by West Publishing?

23 A. Correct.

24 - - -

25 (Exhibit 10, Preliminary Opinions of Darrell

1 Ross, PhD, in Jennings v Genesee County, et al., was
2 marked for identification.)

3 - - -

4 BY MR. KUHLMAN:

5 Q. Okay. Let me show you what we have marked
6 here as Ross 10. The cover sheet says Exhibit L,
7 but if you open up the cover sheet, does this look
8 more like the format that you recognize --

9 A. Yes.

10 Q. -- as one of your reports?

11 A. Uh-huh.

12 Q. Okay. And is this the Jennings v Genesee
13 County Deputies case in which you were retained as
14 an expert?

15 A. Yes.

16 Q. Okay. Is there anything in looking at the
17 report today that indicates to you that this is in
18 some way not a true and accurate copy of your -- the
19 report you provided in that case?

20 A. It doesn't appear to be. The only thing I
21 didn't put on was the top header on each page.

22 Q. I'll represent to you that that is a feature
23 of the court's electronic case filing/case
24 management system.

25 A. I'm sure it is.

1 Q. All of these documents seem to get one of
2 these.

3 A. So other than that, this would have been the
4 report I submitted. An I think that was in, yeah,
5 July 20, 2015. Yes.

6 Q. It was filed with the court in
7 December of '16, but you're correct, right, that you
8 authored it in July of '15?

9 A. Correct. Yeah. What the attorneys do and
10 when they submit it is out of my control.

11 Q. Okay. I have got one more of these for you.

12 - - -

13 (Exhibit 11, Preliminary Opinions of Darrell
14 Ross, PhD, in Johnson v Kent County, et al., was marked
15 for identification.)

16 - - -

17 BY MR. KUHLMAN:

18 Q. This we're going to have the unfortunate
19 position of marking this as Exhibit 11, Ross 11 for
20 purposes of this deposition, and it's regrettably
21 under a cover sheet Exhibit 12. Again, we have got
22 the ECF header at the top, but do you recognize this
23 as the report that you provided in the Johnson v
24 Kent County case?

25 A. Yes.

1 Q. Is there anything, sitting here today
2 reviewing these pages 1 through 14, which would
3 indicate to you that this is not the report that you
4 provided in the Johnson v Kent County case?

5 A. No, it doesn't appear to be. No. I have
6 gone through all of that up to page 12 and 13.
7 Yeah. It appears -- it appears that way.

8 Q. Thank you. I'm going to show you what has
9 come to be known as J-2.

10 - - -

11 (Joint Exhibit J-2, Chatham County Policies and
12 Procedures, was marked for identification.)

13 - - -

14 MR. KUHLMAN: For those of you following
15 along at home, this is the joint exhibit list
16 agreed to by sheriff and plaintiff. This is the
17 use of force and other sheriff's policies, written
18 policies bound together in a nice format.

19 BY MR. KUHLMAN:

20 Q. Dr. Ross, do you recognize -- opening that
21 up, do you recognize those as the policies which
22 appear in a couple different places in your report
23 as policies you reviewed in this case?

24 A. If you will give me a second to crossmatch
25 what you have here to what I put in my --

1 Q. Sure.

2 A. -- opinions report.

3 Well, for one, my number for the restraint
4 chair is Number 03/15/05. This one is 03/15/09,
5 which you have here. So unless we have two
6 different restraint chair policies.

7 Q. What number do you show as your number? I
8 apologize.

9 A. On page 8 Number 03/15-05 -- or /05. I'm not
10 disputing. I'm just saying that this might be a
11 different one than the one I reviewed. That's why
12 I'm checking it.

13 And, again, the use of restraints I have as
14 Number 03/15/08, and this is 04/24/05.

15 MR. PERKINS: What was the question, Cameron?
16 I'm sorry.

17 MR. KUHLMAN: I asked him if this -- if J-2
18 were the policies that he referred to, relied on
19 in forming his opinions, and he's identified a
20 couple discrepancies between the versions of the
21 policies that he says formed the basis of his
22 opinions and the policies that we have got bound
23 together in this joint exhibit.

24 THE WITNESS: You have next in Tab F -- I did
25 read this, but it's not in my report. MH-109

1 dealing with use of restraints on mental
2 health/mental retardation designated inmates.

3 And then the same in Tab G, G as in George,
4 MH-108, "Subject, Crisis Suicide Intervention,"
5 which I didn't see this as a suicide case, nor did
6 I list it as a policy on either page 7 or 8 of my
7 report.

8 BY MR. KUHLMAN:

9 Q. The unfortunate thing about entering into
10 agreements is that we sort of have to leave the set
11 bound together after we agree that that's going to
12 be the set. And so although I understand that
13 that's not --

14 A. I'm just trying to --

15 Q. Sure.

16 A. -- articulate that these policies were
17 provided by Mr. Perkins to me, and as my impressions
18 and opinions were formed from reading the pages and
19 the documents, these are the policies, based on that
20 task and assignment I was given, that I relied on
21 for my report, on pages 7 and 8 of my report, not
22 some of these in your document.

23 For example, another one, code of ethics
24 policy 1/03/19.

25 Q. Is that Tab J?

1 A. Yes, sir. No. It's Tab H.

2 Q. H, yeah.

3 A. Then --

4 Q. Hold on one second. I'm sorry to interrupt.

5 A. Yeah.

6 Q. You had a different version of the code of
7 ethics or you didn't rely on it?

8 A. I didn't rely on it. I don't know.

9 Q. Okay.

10 A. I have to -- I have all the policies that I
11 was given, so we can cross-reference that.

12 Q. Okay.

13 A. But I didn't -- again my task was not to see
14 if these officers were ethical or not. My task as
15 clearly spelled out in Items 8 of -- on page 7.

16 Anyway, let's see.

17 MR. KUHLMAN: Don't you have one of these?

18 MR. PERKINS: Yeah. You gave it to me.

19 THE WITNESS: The -- just to affirm -- now,
20 on Tab I that's correct on training and staff
21 development. That's what I have in my report
22 here.

23 And then Tab J is emergency response team
24 policy 1/04/02, which I don't have in my -- either
25 my page 7 or 8. Did not rely on that policy for

1 my opinions and did not consider this to be an
2 emergency response team call-out or incident.

3 BY MR. KUHLMAN:

4 Q. Do you recall from your review of the record
5 that several of the officers that did, in fact,
6 respond were CERT team members?

7 A. Sure. So what?

8 Q. Do you --

9 A. Yeah, I do remember that. Yeah.

10 Q. Do you recall from your reading of the
11 depositions, in particular the depositions of
12 Mr. Capers and Mr. Kenny, that there were orders
13 given for CERT team only to be in certain parts at
14 that -- at certain points during the event or the
15 incident?

16 A. What I do recall is I believe his comment was
17 to be in the cell, not at certain points. My recall
18 of the question is in the cell.

19 Q. So you're representing it spatially. I was
20 representing it temporally. We will agree it was in
21 the cell, which can be described as a certain period
22 of the overall incident; correct?

23 A. But -- yes, but this was not a call out CERT
24 emergency use of the special response team of the
25 jail.

1 Q. Right. So it's not fair to say this was a
2 planned use of force. This was an unplanned use of
3 force.

4 A. It's spontaneous.

5 Q. Spontaneous. Okay.

6 A. So with that caveat and that explanation, in
7 syncing your Exhibit J-2 with what I have in my
8 opinions report page 7 and 8, there are several
9 there that --

10 Q. Don't match.

11 A. -- that don't match. Exactly. That's a good
12 way of saying.

13 Q. Can you -- would you mind -- I know you said
14 you brought them. Would you mind retrieving from
15 the materials you brought today the 3/15/05, the use
16 of force? I believe that's what -- is that accurate
17 to say that use --

18 A. Let's see. Use of force. It's on page 8
19 you're referring to? The 301-010.40 and/or 3/15/15.

20 Q. On -- it's on the --

21 A. Page 8 or 7?

22 Q. 3/15 -- is it 3/15/08, the use of restraints?
23 Excuse me. It's 3/15 -- no. I was right. Use of
24 restraints are number 3/15/05. 3/15/05 I believe is
25 you said that this -- we have got 3/15/09 here in

1 this bound copy.

2 A. Okay. I have to go back. I don't remember
3 what I said. You're talking about use of force;
4 correct?

5 Q. No. I'm talking about the use of the
6 restraint chair.

7 A. Restraints -- restraint chair?

8 Q. Yes, sir. It's Tab B in this book.

9 A. 3/15/09 in the bound packet you gave me.

10 Q. Yes. You indicated that you had not seen
11 3/15/09, that the restraint chair policy that you
12 relied on in forming your opinions was 3/15/05.

13 MR. PERKINS: To clear this up, do you want
14 to look at --

15 THE WITNESS: I'll look at it.

16 MR. PERKINS: -- your document and see?

17 THE WITNESS: Yeah. I'm not saying I didn't
18 look at these. I'm saying that I had -- what was
19 given to me is -- I don't recall two different
20 restraint chair policies, to be quite honest with
21 you, after 5,000 pages. But I can look at the
22 documents if that's what you want me to do.

23 BY MR. KUHLMAN:

24 Q. Right. And, again, I'm just trying to make
25 sure we have -- to the extent there's some consensus

1 here, I want to make sure that when we say these are
2 the policies in effect we're talking about the same
3 set of written policies.

4 MR. KUHLMAN: Do you have any helpful
5 clarification how we might --

6 MR. PERKINS: Let's get him to look and see.
7 He could have a typo in there as far as the
8 number. That would solve the issue; right?

9 MR. KUHLMAN: Yeah.

10 MR. PERKINS: Okay. Let's go off the record
11 for now. Are you okay with that?

12 MR. KUHLMAN: Yeah.

13 (A recess was taken from 3:18 p.m. until 3:27 p.m.)

14 MR. KUHLMAN: We can go back on.

15 BY MR. KUHLMAN:

16 Q. All right. Dr. Ross, we're back on the
17 record after a short break. Before the break I was
18 asking you about what we have identified as Joint
19 Exhibit J-2, Tab B. And in Tab B here we have what
20 we understand to be the sheriff's use of restraint
21 chair policy that was in effect at the time of
22 Mathew Ajibade's death. In J-2 it's listed as
23 Policy Number 3/15/09.

24 Do you have -- do you have a copy of 3/15/09
25 in front of you now?

1 A. Yes.

2 Q. Okay. Have you had an opportunity to review
3 3/15/09?

4 A. Yes.

5 Q. Okay. Is there anything about 3/15/09,
6 having read it today, which strikes you as different
7 than the policy that you say you reviewed in order
8 to form your opinions in the report?

9 A. Only to say that there's another policy
10 that's sitting on the table that's a little more
11 lengthier than this one that I also reviewed.

12 Q. Okay.

13 A. So there's -- and I don't know the date of
14 that one or this one, but they're different.

15 Q. Okay. But let's --

16 MR. KUHLMAN: Can we make a copy of this?

17 MR. PERKINS: Sure. Can I take a look at it?

18 MR. KUHLMAN: Yeah.

19 MR. PERKINS: We're off the record.

20 (A recess was taken from 3:29 p.m. until 3:32 p.m.)

21 MR. KUHLMAN: We're back on.

22 - - -

23 (Exhibit P-9, Procedures for Use of the
24 Restraint Chair, Bates No. PA00595 - 00597, was
25 previously marked for identification.)

1 - - -

2 BY MR. KUHLMAN:

3 Q. Dr. Ross, again, after a short break, I'm
4 going to show you what we have premarked as P-9,
5 papa 9. Do you recognize the -- what's the title of
6 that document?

7 A. "Procedures for the Use of the Restraint
8 Chair."

9 Q. Okay. Earlier you testified that you
10 reviewed the Internal Affairs reports that were
11 completed in the investigation of this case. Do you
12 recall that?

13 A. Yes.

14 Q. And do you recall, in your review of those
15 reports, coming across this particular policy that
16 we have just identified as P-9?

17 A. Correct.

18 Q. Okay. Can you do for me the arduous favor of
19 looking at P-9 alongside Tab B from J-2?

20 A. Yes.

21 Q. Okay. And help the jury understand where
22 these two documents are similar and where they are
23 different.

24 MR. PERKINS: Object to form.

25 ///

1 BY MR. KUHLMAN:

2 Q. Go ahead and answer if you can.

3 A. Well, they seem pretty similar in format and
4 narrative and direction, instruction. The one
5 that's identified as Policy Number 03/15/09 seems to
6 be written, my impression, more custodial and
7 security and control related directing the officer,
8 where the other has that but has additional
9 information and steps than 3/15/09.

10 Q. Okay. Earlier I think we agreed to use this
11 word "adequate"; correct?

12 A. Yes.

13 Q. As it relates to a particular policy?

14 A. Correct.

15 Q. Or evaluating a particular policy; correct?

16 A. Correct.

17 Q. Okay. Do you have any reason to sitting here
18 today looking at these two to consider whether one
19 or the other is not, in fact, adequate based on your
20 training and experience?

21 A. No. I find them adequate.

22 Q. Okay. If you had to pick in your ideal
23 environment where you're designing a correctional
24 facility and implementing policies there, which of
25 these two policies would you prefer?

1 A. I can see blending both of them. I mean, I
2 can see advantages of one and advantages of the
3 other. So I can't -- I can't make a distinction
4 that this one is better than this one or vice versa.

5 Q. Setting aside my unreasonable request to ask
6 you to make a value judgment, I just want to look at
7 the actual contents and express an opinion. I'm not
8 sure there's a wrong answer here. I just would like
9 to know because I'm not a corrections expert. So I
10 would like to know from your perspective which one
11 of these policies you would prefer if you were
12 designing the scheme.

13 A. I think they're both adequate. It addresses
14 the need and the use of the restraint chair.

15 Q. Okay. Can I look at that one for just a
16 moment?

17 There's a complete copy of P-9. Can you see
18 in -- let's call this J-2 for our purposes, J-2B.
19 Do you see anywhere in that policy the requirement
20 for observation of the restrained individual?

21 A. You're saying 3/15/09?

22 Q. That's correct.

23 A. Item D conducting visual observations every
24 15 minutes --

25 Q. Okay.

1 A. -- of the restrained inmate.

2 Q. What is -- okay. And on the -- and then
3 Item E?

4 A. Medical personnel must check the inmate at a
5 minimum every two hours.

6 Q. Okay. And to get a little bit out of order
7 here, Item A?

8 A. Direct visual observation by staff members is
9 continuous prior to the medical assessment.

10 Q. Is the medical assessment a part of the
11 process of -- at what point in the process of
12 placing a subject or detainee into a restraint chair
13 is the medical assessment completed?

14 A. Just as you mentioned, after he's restrained
15 in the restraint chair.

16 Q. Okay. And so up until that medical
17 assessment, this particular policy calls for direct
18 visual observation?

19 A. That's not how I read it. My inference
20 here -- my impression is that once they're secured
21 you'll have observation. You can't have -- can't
22 start it until you get them secured.

23 Q. Okay. Well, but if there are individuals in
24 the -- you know, if there are individuals -- if
25 members of the corrections staff are placing a

1 detainee into restraints, they're not doing it like
2 this looking -- and I'm gesturing over my shoulder.
3 I mean, they're watching the detainee as he's --

4 A. Exactly.

5 Q. So there are eyes on the detainee throughout
6 the process up until the -- continuously prior to
7 medical assessment.

8 A. Correct.

9 Q. Okay. If you look at the -- look at P-9 for
10 a second with me, the Number 1, A-1, what does A-1
11 call for there?

12 A. "The camera operator will videotape the
13 offender throughout the entire process of the use of
14 restraint chair. Care will be taken to protect the
15 safety of the camera operator."

16 Q. Okay. In your model corrections environment
17 would you prefer a camera operator with videotape or
18 visual observation?

19 A. At what point? During the whole process?

20 Q. Prior to the medical assessment?

21 A. I rather have visual observation without the
22 camera.

23 Q. What makes you say that?

24 A. Because I have the ability -- the person has
25 the ability to have various eyes from various

1 angles. If you have one operator, you're only
2 getting it from one perhaps perspective, which you
3 may have things that comes into play that obscure
4 the camera operator, getting bumped, the camera goes
5 away so we don't get to see the continuous use of
6 that. So I would rather have eyes normal -- I mean,
7 both are great, but if you say I prefer, I would
8 rather have direct observation at the time and at
9 intervals that are necessary to make the observation
10 by the officer.

11 Q. Okay. And so that multiangle perspective
12 that you just described requires multiple
13 individuals; correct?

14 A. It could, yes. Or I could be moving. That
15 one person could be moving different -- in different
16 angles. Yes, more than one set of eyes, because
17 that's normally what's going to take three to four
18 to five officers anyway to restrain somebody that's
19 violent and combative and doesn't want to be placed
20 in the chair.

21 Q. Well, isn't it reasonable to say in order to
22 have a better perspective than a single camera
23 operator, you have got to have more than one set of
24 eyes, because if you only have one set of eyes
25 moving around, that's the same as if the camera

1 operator were moving around; correct?

2 A. At that point in time, yes.

3 Q. Right. Okay. So these multiple
4 perspectives -- these multiple visual perspectives,
5 is that not consistent with your conclusion in the
6 book that a use-of-force incident report should be
7 completed by multiple officers?

8 A. That have participation in it, in whatever
9 level that they may be participating.

10 Q. To give this more holistic perspective of
11 what occurred; correct?

12 A. I would agree with that.

13 Q. Okay. Number 2 on this sheet I think refers
14 to something we talked about earlier, which is,
15 "Whenever possible, all security-related
16 applications of the restraint chair will be approved
17 in advance..."

18 Do you see any advanced approval -- advance
19 approval requirement in J-2B here, the other
20 document?

21 A. Well, let's finish the sentence first --

22 Q. Okay.

23 A. -- if you don't mind.

24 Q. Sure.

25 A. "...by the facility or head/acting facility

1 head."

2 Item B, "Approval for the use of restraint
3 chair must be obtained from an individual at the
4 rank of lieutenant or above."

5 Q. Okay. So there's no -- there's sort of some
6 ambiguity in the tense there, but you would read
7 both of those to require prior approval?

8 A. Correct.

9 Q. Okay.

10 A. Based on the policy. Now -- that's as far as
11 I'll go with that.

12 Q. Okay. Number 5 on the -- on P-9 says,
13 "Placement of an offender in the restraint chair
14 will be accomplished by a use-of-force team."

15 Is the -- what is a -- what is a use-of-force
16 team?

17 A. I don't know what -- how they would classify
18 that here. I've not seen any document that would
19 identify or specify that.

20 Q. Is there some suggestion in that language,
21 though, that not just anyone can put a detainee into
22 a restraint chair?

23 A. I wouldn't read it that way. The
24 use-of-force team could be a collection of officers.

25 Q. Okay. The detail, the specific steps on the

1 second page of P-9, do you see that level of detail
2 in the policy marked P-2B?

3 A. Yes.

4 Q. I'm sorry?

5 A. Specific steps Item 3A through --

6 Q. J?

7 A. Yeah, whatever is in there. J. I see those.

8 Q. Okay. You see those in this policy?

9 A. Right.

10 Q. But do they --

11 A. They're not in this policy, in 3/15/09.

12 Q. Right. Is it generally your opinion that the
13 more information, the more guidance you can provide,
14 the better it is for the line officers who are
15 tasked with complying with these policies?

16 A. Sure.

17 Q. Okay.

18 A. But it doesn't mean it has to be in the
19 policy.

20 Q. I didn't -- it wasn't a requirement. I said
21 is it better.

22 A. I just wanted to clarify to make sure what
23 we're talking about.

24 Q. Okay. I'm not -- I wasn't trying to make a
25 binary distinction. I was trying to make a scaled

1 distinction.

2 And then in here we've got on C2 -- what do
3 we have for the frequency of the checks?

4 A. You're talking about P whatever it is.

5 Q. I'm talking about P-9.

6 A. Every 15 minutes.

7 Q. Okay.

8 A. C2.

9 Q. Okay. And is that -- is there any
10 distinction there from P -- excuse me, J-2B? I'll
11 help you. It's at Item ID.

12 A. You lost me on that one, Counselor.

13 Q. Okay. Is there -- can we agree that there's
14 a requirement of 15-minute checks in P-9?

15 A. Yes.

16 Q. Okay. Do you see a requirement of 15-minute
17 checks in J-2B?

18 A. Yes.

19 Q. Okay. So --

20 A. And it's actually Item D specifically.

21 Q. Item D of Exhibit J-2B, as in bravo?

22 A. Yes, sir.

23 Q. Okay. So is it fair to say, then, that
24 regardless of which of these policies may have been
25 in effect at the time of Mr. Ajibade's death, it was

1 the official policy of the Chatham County Sheriff's
2 Office that a restrained individual was to be
3 checked every 15 minutes?

4 A. That is correct.

5 Q. Okay. In your review of the video evidence
6 in this case, did you observe Mr. Ajibade being
7 checked every 15 minutes?

8 A. No.

9 Q. Okay. What conclusion would you draw from
10 the failure of Chatham County Sheriff's Office staff
11 to fulfill their obligations under the policy of
12 checking Mr. Ajibade every 15 minutes?

13 MR. PERKINS: Object to form to the extent
14 "staff" is plural.

15 MR. KUHLMAN: Think staff can be singular or
16 plural?

17 MR. PERKINS: I know. That's why I objected
18 to it.

19 THE WITNESS: That they didn't make the check
20 every 15 minutes.

21 BY MR. KUHLMAN:

22 Q. Right. Is that -- that's not significant to
23 you?

24 A. You didn't ask me that. You said what do I
25 conclude, and I conclude they didn't make the

1 checks. I agree with you. I put it in my report.

2 Q. I appreciate that factual observation. I'm
3 asking you about the significance now of the failure
4 of any Chatham County Sheriff's Office employee to
5 check on Mr. Ajibade, as required by the policy,
6 every 15 minutes.

7 MR. PERKINS: Object to form.

8 THE WITNESS: And I agree with you. They
9 didn't do it.

10 BY MR. KUHLMAN:

11 Q. But I didn't ask you whether you agreed
12 with --

13 A. That's my answer.

14 Q. With all due respect, Dr. Ross, I'm not
15 asking --

16 A. That's my answer. I'm not changing it. I'm
17 responsive to your question. I agree with you they
18 didn't make the checks. It's significant. I agree.

19 Q. Okay. Thank you.

20 I'm going to try to save you some time here,
21 Dr. Ross.

22 We'll send this to Mr. Perkins and y'all can
23 verify it later, but are we on the right track here
24 that this is the slides you referred to earlier from
25 the presentation?

1 A. If you scroll up a little bit, I want to make
2 sure.

3 Q. Let me see if I know how to operate it.

4 A. Because the "and" underneath that needs to
5 have --

6 Q. Oh, the ampersand?

7 A. There you go. And Michael Brave. That's it.

8 Q. Okay. This was the one at the -- in
9 St. Louis?

10 A. That's correct.

11 Q. Did you give the same presentation or a
12 different one in Chicago?

13 A. It was a different one.

14 Q. Okay. Were there slides from the Chicago
15 presentation?

16 A. Yes.

17 Q. Okay. So we could get those also?

18 A. Yes.

19 Q. Okay. Thank you.

20 Can you turn with me to page 12 of your
21 report? This is within the report in section of
22 your opinion that says, "The officers provided
23 adequate monitoring of Mr. Ajibade during the
24 pre-booking process." We're on the second page of
25 that section. Are you with me?

1 A. No, I'm not yet.

2 Q. Okay.

3 A. You said page 12?

4 Q. Yes, sir.

5 MR. PERKINS: What's the question?

6 MR. KUHLMAN: My question would be, "Are you
7 with me?" I'm trying to direct his attention to
8 the middle paragraph of page 12 within the section
9 adequate monitoring during pre-booking process.

10 THE WITNESS: What sentence? What line?

11 BY MR. KUHLMAN:

12 Q. The last line of the middle paragraph.

13 A. That's not what mine says. Page 12.

14 Q. My apologies, Dr. Ross. We're getting --
15 we're getting hung up here. I'm referring to an
16 entire section. I was trying to say we're within
17 the Section B.

18 A. You didn't -- okay. I'm sorry. You didn't
19 say that. You said on page 12 middle paragraph.

20 Q. Okay.

21 A. Monitoring. So I'm looking for the word
22 "monitoring," but now that you said section. I'm
23 with you.

24 Q. Okay. Are you now on -- do you see the
25 paragraph in the middle of page 12?

1 A. I have been there. Yeah.

2 Q. Okay. You write at the first paragraph -- at
3 the first sentence of that paragraph, "CCSO has been
4 criticized for allegedly not performing the
5 pre-booking process immediately for Mr. Ajibade and
6 not ensuring that he immediately received medical
7 screening."

8 Do you see that portion?

9 A. Yes.

10 Q. Okay. And you've got "immediately" in scare
11 quotes; correct?

12 A. Correct.

13 Q. Okay. And then you go on to categorize that
14 criticism as absurd because the events say
15 Mr. Ajibade did not need immediate medical
16 attention; correct?

17 A. That's correct.

18 Q. Okay. What -- from what perspective are you
19 expressing this opinion that Mr. Ajibade did not
20 need immediate medical attention?

21 A. What perspective?

22 Q. Yes. Is it your perspective as a professor?
23 Is it your perspective -- you're not a medical
24 doctor, so it can't be your perspective from a
25 medical doctor. So from what perspective is this

1 opinion?

2 A. From my own personal perspective.

3 Q. Okay. So it's your understanding that a
4 corrections officer or somebody who has experience
5 in the corrections environment ought to be in a
6 position to be able to determine whether or not an
7 individual needs immediate medical attention?

8 A. If it's obvious and shows -- there's several
9 things. You could have a complaint by the detainee.
10 You could have obvious apparent injuries of the
11 detainee, behaviors that would indicate that or
12 actual communication from the detainee saying, "I'm
13 in pain" or "I need hospitalization." So
14 observations, assessments based on the experience of
15 the corrections officers, their training and
16 consistent with their observations of the detainee
17 as he enters into the facility.

18 Q. And is the same -- can the same be said for
19 mental health needs as we have just said for medical
20 needs?

21 A. Yes, behaviors. Absolutely.

22 Q. So it's possible -- it's possible, if not
23 expected, that a corrections officers should be on
24 the lookout for behaviors which indicate either a
25 serious medical need or a serious mental health need

1 from a detainee?

2 A. Behaviors, yes, I would agree with that.

3 Q. Okay. You don't -- it doesn't require any
4 specialized medical training to identify these
5 behaviors?

6 A. From where?

7 Q. I'm sorry?

8 A. From a corrections officer or talking
9 medical?

10 Q. As a corrections officer.

11 A. They receive training, but I wouldn't -- when
12 you say "specialized," they would get -- they would
13 get more training than a lay citizen.

14 Q. Right. More --

15 A. To help them make that assessment.

16 Q. Right. But that's not -- but they don't need
17 to go to nursing school in order to make that
18 assessment?

19 A. Not on behaviors, no.

20 Q. Thank you.

21 In the last paragraph you write that, "Unless
22 there are extreme circumstances, detainees will be
23 processed consistent with the order in which they
24 are admitted." Is there anything that changes
25 between the time that you wrote this report and

1 today that would change your opinion that it's
2 first-in/first-out processing?

3 A. Where are you at again, sir?

4 Q. I'm the middle -- I'm sorry. I'm at the last
5 line of the middle paragraph.

6 A. Last line in the middle paragraph.

7 Q. Yeah.

8 A. Yes, that doesn't change. My opinion hasn't
9 changed with that statement.

10 Q. Okay. Well, can you tell me -- give me an
11 example of an extreme circumstance which would
12 permit a departure from this sequence?

13 A. This case.

14 Q. Okay.

15 A. When he became violent, that became a
16 departure. Up until that time he was no problem.
17 So this case -- once Richardson took him out of the
18 cell, Mr. Ajibade, and he began to violently resist
19 the officers, that became a -- if you want -- your
20 language, coming from an unusual circumstance that
21 would require them to stop what they were doing and
22 attend to this particular detainee and his
23 behaviors. This is a perfect example of that.

24 Q. When did the violent resistance begin?

25 A. Outside the officers' station when they

1 released him from cell 6.

2 Q. Okay. Can you tell me from your review of
3 the documents in this case and the video which
4 initial -- what was Mr. Ajibade's initial
5 demonstration of violent resistance?

6 A. This would have been several minutes after he
7 was out of cell 6 when Officer Richardson and
8 Capers, particularly Officer Richardson, was trying
9 to communicate with him to sit in a chair, and at
10 that point in time he -- Mr. Ajibade became
11 agitated. I have listed a whole host of things,
12 behaviors indicative of an officer to put them on
13 alert that he was uncooperative, his stance, his
14 body movements, his waving of the hands, the
15 clasping of the arms across the chest gave all the
16 contextual cues of an assault or impending assault
17 or fight or at least "I'm going to be uncooperative"
18 at the very minimum. So at that point in time the
19 officer would form the impression and opinion that
20 he's not going to cooperate.

21 Q. Okay. Is it your -- is noncooperation in
22 your mind synonymous with violent resistance?

23 A. It led to it.

24 Q. How many intermediate steps are there between
25 this behavior you just described and violent

1 resistance, known cooperation and violent
2 resistance?

3 A. There was none. It went from that to
4 immediately violent resistance.

5 Q. Okay. And what was the -- what was the first
6 physical manifestation by Mr. Ajibade of his violent
7 resistance?

8 A. Well, first he demonstrated his body posture
9 and body dynamics to an officer that he was not
10 going to cooperate.

11 Q. Okay.

12 A. Secondly, he jerked his hands away from the
13 officer -- from Officer Richardson and then began to
14 actively engage with the officers.

15 Q. Okay.

16 A. And when I say officers, Richardson, Vinson
17 and Capers.

18 Q. Thank you. When he -- when Mr. Ajibade, you
19 say, jerked away, can you show me just with your --
20 can you just show me with your arms or with your
21 body which -- how you characterize that jerking
22 away?

23 A. He first threw his hands up and started
24 pulling away his arms this way.

25 Q. Okay.

1 A. And twisting his body to get away from the
2 officers. In other words, suggesting and showing,
3 that I don't want you to touch me, that I'm prepared
4 to, perhaps in the officer's mind with that type of
5 behavior -- and we teach officers to engage with
6 you. He just didn't put his hands down to his side
7 and just become passive or sit down. He became
8 active. He became agitated. He became aggressive.

9 Q. Okay. So the twisting of his body at that
10 point --

11 A. And the positioning of his hands and arms.

12 Q. Okay. Let's think of a -- let's try to come
13 up with some shorthand to describe -- to refer to
14 twisting of the --

15 MR. KUHLMAN: I'm getting there. Okay?

16 MR. PERKINS: Well, I'm saying, we've got the
17 video. I don't know why you're doing this.

18 MR. KUHLMAN: Well --

19 MR. PERKINS: Of course, but, I mean, we can
20 watch the video and he can explain his opinions.

21 I can call it up for you right now.

22 MR. KUHLMAN: I want to look at the video in
23 just a second then.

24 MR. PERKINS: Okay.

25 ///

1 BY MR. KUHLMAN:

2 Q. Dr. Ross, in your -- several times today we
3 have talked about Graham v Conner and we have talked
4 about the Kinsley case; correct?

5 A. Well, at least Graham.

6 Q. Okay. And I think you indicated that you
7 have written -- you wrote an article shortly after
8 the Kinsley opinion was published that drew from it
9 information that would be helpful for risk
10 management or corrections officers' development of
11 policy and implementation of the policy; is that
12 correct?

13 A. Yes, as well as a number of other things, but
14 I would agree with that.

15 Q. Okay. In fact, you mention the Kinsley case
16 in your opinion on page 15; correct?

17 A. That's correct.

18 Q. And you identify the factors there that you
19 say create the totality of -- or the totality of the
20 facts and circumstances confronted by the officer at
21 the moment; correct?

22 A. Correct.

23 Q. Okay.

24 MR. PERKINS: Cameron, do you know Root said
25 that use of force leading up -- leading to this

1 incident were reasonable? I'm just wondering if
2 you're wasting time. I mean, I know you have
3 somewhere to be today. You're about trying to
4 argue against qualified immunity on the use of
5 force.

6 MR. KUHLMAN: I'm not arguing with you it's
7 qualified immunity on the use of force. I'm
8 trying to understand how Dr. Ross's opinions
9 relate to one another.

10 MR. PERKINS: Okay.

11 MR. KUHLMAN: But I appreciate the help, Ben.

12 MR. PERKINS: Okay.

13 BY MR. KUHLMAN:

14 Q. Dr. Ross, you say on page 16, at the top of
15 page 16 --

16 A. 16?

17 Q. Yes, sir.

18 Do you see where you write, "I emphasize to
19 pay attention to the pre-assault cues, behaviors,
20 actions, inactions and posturing"? And the list
21 goes on body position, stance of the person, sudden
22 furtive movements, behaviors, arguing with an
23 officer, detainee agitation, charging at an officer,
24 threatening statements or lack of verbalization by
25 the detainee.

1 A. I'm with you.

2 Q. Okay. Do you -- are those factors -- are
3 those cues in the Kingsley case or are those cues
4 something you have developed on your own?

5 A. Well, behaviors would be part of the Kingsley
6 case in terms of that, but these -- these -- that
7 then flows into these pre-assault cues, contextual
8 cues as we would see in the jail or law enforcement.
9 These are all body dynamics suggesting for officers
10 being on high alert to increase their safety and as
11 I say to emphasize to pay attention. So they're not
12 smacked spontaneously other or charged or kicked or
13 run over or a sundry of other things.

14 So these are all the types of things we teach
15 officers, as I say, in the training I provide for
16 them to cue into when you're talking to an
17 individual who may be one -- at one point compliant
18 and spontaneous all of a sudden and, based on these
19 factors, goes from 1 to 100 just that fast. So you
20 have to be prepared for that.

21 Q. And, again, these cues, can you put them with
22 one of the -- do they belong with any one factor in
23 particular from Kingsley? You got the factors from
24 Kingsley numbered here 1 through 6, and then --

25 A. We're back on 15 you mean?

1 Q. I'm trying to refer at the same time to
2 bottom of 15 and top of 16.

3 A. Well, it would relate to the perception of
4 the officer. It would relate to Number 4, the
5 suspect posed an immediate threat. These are all
6 threatening cues of preemptive types of behaviors
7 that could flow into actively resistance, okay,
8 which is Number 5, and Number 6 which is attempting
9 to evade seizure by flight. You can't read into the
10 intent of someone's mind, the suspect or arrestee or
11 detainee. So you have to be cognizant of those
12 facts.

13 Then it flows into the others I have listed
14 there, A through whatever it is, D. Environment has
15 to be looked at in case -- here we have a jail.
16 Weapons or potential weapons, prisoners always have
17 weapons.

18 Q. So, again, these -- your cues are things you
19 have developed in light of what you read in the
20 case; correct?

21 A. These are from -- yes, and my studies -- for
22 example, which we talked about earlier, my
23 dissertation on citizen resistance, what I studied,
24 the types of behaviors that flows with Graham v
25 Connor's actively resisting. What are those

1 behaviors as well as what the FBI's developed, what
2 other trainers have developed over the years and
3 what I have researched and studies both in looking
4 at instances in corrections and on the street.

5 Q. Okay.

6 A. Law enforcement officers.

7 Q. Can you turn with me to page 23 of your
8 report?

9 A. Okay.

10 Q. Bottom paragraph there. I'm going to ask you
11 about the second sentence. "Corporal Evans as the
12 supervisor," beginning there. Do you see where I
13 am?

14 A. Yes.

15 Q. Okay. Is it accurate to say that from your
16 opinion is that Corporal Evans knew she was supposed
17 to be doing the checks but she didn't do the checks?

18 A. Correct.

19 Q. Okay. What confuses me is that you then go
20 on to say that Lieutenant Johnson did not abdicate
21 her supervisory function during this period. Is
22 that -- is that conclusion premised on some evidence
23 that Lieutenant Johnson did not know that Corporal
24 Evans was not doing the checks?

25 A. On some evidence?

1 MR. PERKINS: Object to form.

2 BY MR. KUHLMAN:

3 Q. Well, Lieutenant Johnson has a responsibility
4 to supervise Corporal Evans; correct?

5 A. Correct.

6 Q. Okay. And Corporal Evans has a
7 responsibility to do the checks; correct?

8 A. Correct.

9 Q. Okay. So if Corporal Evans doesn't do the
10 checks, doesn't that fall back to Lieutenant
11 Johnson?

12 A. No.

13 Q. Why not?

14 A. Because the policy directs the officer to do
15 the checks. The lieutenant or the supervisor can't
16 be with somebody 100 percent of the time. So you're
17 here today. What's your supervisor doing back at
18 your office? Are you responsible or is he
19 responsible for you? He's not here.

20 So what I'm saying is, everyone, that I read
21 in all of the 5,000 pages went through basic
22 academy, went through all the policies and
23 procedures, their CTO program or FTO program, was
24 trained has been chronically trained testified, they
25 knew the policies, testified they knew the

1 responsibility. And in this case Evans failed to do
2 her responsibility. That's not Johnson's
3 responsibility or her fault. That's her fault to
4 not fulfill -- Evans, to fulfill her training and
5 policy based on the circumstances of this case.

6 Q. So what were Lieutenant Johnson's
7 responsibilities then?

8 A. At what time?

9 Q. On -- from the time at which Mr. Ajibade is
10 in the chair until he's later found at approximately
11 1:30?

12 A. Well, she articulated she started gathering
13 reports and started to talk to involved officers at
14 some point in time to try to get somewhat of a
15 handle what was going on and had attended to
16 Sergeant Roland and EMS that was attending to her
17 and transporting her ultimately out of the facility
18 to the hospital and trying to get a handle on what
19 was going on at this time. So she was responsible
20 for that and not for the individual oversight of
21 shadowing a person -- I mean, there is 20 officers
22 there that evening. She's not -- she can't be with
23 every one of these officers, in particular when they
24 know their job, and they have testified they know
25 their job.

1 Q. Well, you introduced an interesting
2 hypothetical a few moments ago when you asked about
3 what my supervisor was doing back at the office
4 while I was down here. I think you would agree with
5 me that my supervisor, to the extent I have a
6 supervisor, could check on me either by phone or by
7 e-mail throughout the day without necessarily -- and
8 not necessarily have to shadow me or be right
9 sitting in this chair to have some idea of whether
10 or not I was or was not completing a task for which
11 I was responsible at that time; correct?

12 A. Correct.

13 Q. Okay. Is there any evidence that you
14 reviewed in this case that supports a conclusion
15 that Lieutenant Johnson checked with Corporal Evans
16 whether she was doing the checks?

17 A. I think there is, but I don't think there's
18 any evidence contrary that she didn't.

19 Q. Just the first part of the question.

20 A. No. That's my answer.

21 Q. Well --

22 A. That's my answer.

23 Q. Okay.

24 A. I'm standing by it. I'm not changing it.

25 Now, you can ask a different question if you would

1 like, but that's my response to your question.

2 Q. Do your answers to the questions I'm -- would
3 the answers to my questions that I have been asking
4 you today, are they fixed or would they change if
5 there was new evidence introduced?

6 A. I'm always open to looking at new evidence.

7 Q. Okay. So if --

8 A. As I reported on my report, these are
9 preliminary opinions.

10 Q. Well, I appreciate that, and so I'm asking
11 you whether or not if there was evidence or some
12 indication in the record that Lieutenant Johnson did
13 not check with Corporal Evans whether she was doing
14 the checks, would that change your opinion about
15 whether or not Lieutenant Johnson abdicated her
16 supervisory responsibility?

17 A. Absolutely not.

18 Q. It wouldn't change your opinion?

19 A. No. No.

20 Q. So it doesn't matter whether or not
21 Lieutenant Johnson checked with Corporal Evans
22 whether she was making the checks?

23 A. No, it doesn't. Corporal Evans had her duty
24 to do it, and she didn't do it. While Lieutenant
25 Johnson is attending to totally a sundry of other

1 items to deal with that's involved in this case or
2 other issues that have come up.

3 MR. PERKINS: I think you may have only 45
4 minutes left just because of the firm closing.

5 MR. KUHLMAN: Okay. Let's take -- how long
6 have we been going? Do you want to take five
7 minutes here and let me see if I can --

8 MR. PERKINS: Sure.

9 MR. KUHLMAN: -- come to some more deliberate
10 speed?

11 MR. PERKINS: Sure.

12 (A recess was taken from 4:10 p.m. until 4:22 p.m.)

13 MR. KUHLMAN: We'll go back on.

14 - - -

15 (Exhibit 12, Expert Witness Disclosure of
16 Darrell C. Ross, PhD, was marked for identification.)

17 - - -

18 BY MR. KUHLMAN:

19 Q. Dr. Ross, we just took another break, but I
20 want to show you what we have marked as Ross 12. Is
21 that a copy of the report you have given in this
22 case, along with your CV?

23 A. Okay. The report appears to be in order
24 there. Yes, sir, it appears to be in order here.

25 Q. Thank you. Sitting here today -- it's been

1 some weeks I suppose since you drafted the report.
2 Are there any typographical errors or other larger
3 issues that you would like to identify and correct
4 here on the record today?

5 A. Yes. We mentioned -- what did you say, 12?

6 Page 14. I think that's right. It should
7 be -- page 14, last paragraph, fifth sentence down,
8 Item D should be Cahall instead of Capers. Do you
9 want me to go ahead and write that in?

10 Q. Sure.

11 A. Cahall. And I think that's it. Right.

12 MR. PERKINS: It's on page 14. The
13 handwriting on page 14 of Exhibit 12 is your
14 handwriting?

15 THE WITNESS: Correct.

16 MR. PERKINS: Okay.

17 BY MR. KUHLMAN:

18 Q. Were there any other --

19 A. I think that's it, to the best of my
20 recollection. Yes.

21 Q. While I'm thinking about it, do you recall
22 the approximate date when you wrote your first draft
23 of this report or sat down as you described earlier
24 with a fresh sheet of paper and wrote the report in
25 the Ajibade case?

1 A. Roughly. So it would have been about four or
2 five days prior. So about August 5th, 4th, 3rd,
3 somewhere in there.

4 Q. Okay. A little more housekeeping on page 13,
5 which is right where the edit you made, in
6 approximately the dead middle of the page, you
7 refer -- you say the issue is, "Whether the officers
8 initiated the process..."

9 Do you see where I am?

10 A. Yes.

11 Q. Okay. "...in a timely and reasonable period
12 given the numerous variables impacting the
13 facility," et cetera.

14 A. Correct.

15 Q. Based on your review of the records in this
16 case, if you have it to say, wouldn't -- how
17 would -- what would have constituted a timely and
18 reasonable initiation of the process?

19 A. You mean a period of time?

20 Q. Yes, sir.

21 A. No more than what was happening in the case.

22 Q. So the time at which the officers made the
23 decision to take Mr. Ajibade out of the holding cell
24 to be processed, that was the ideal time for that to
25 occur?

1 A. Correct.

2 Q. Okay. And I assume that -- is it fair to say
3 that that's based on the factors that you have
4 identified here, the numerous variables impacting
5 the facility? Would that be the population, the
6 number of folks coming in the door, the staff
7 available? Are these the factors that you would
8 identify?

9 A. Yes, and their duties that they are
10 performing in concert for their assignment and the
11 detainees that were already in the queue ahead of
12 Mr. Ajibade.

13 Q. Okay. Turning to page 27 of your report,
14 this -- again, I don't want to throw you off here,
15 but this is under your second opinion. The heading
16 for your second opinion appears two pages earlier on
17 25. It says, "Administrators of CCSO have provided
18 their officers with training commensurate with their
19 correctional duties." I want you to look at 27.
20 I'm just trying to give you some orientation for
21 what portion of the report we're in.

22 You have got some reasons enumerated here.
23 I'm talking about the paragraph that begins,
24 "Eighth, by practice." You write in there that,
25 "The position of corporal and above were trained in

1 the TASER and trained to authorize the use of the
2 TASER. The TASER was retained in a lockbox and was
3 not routinely carried as part of the officer's
4 uniform."

5 Do you see that portion?

6 A. Yes.

7 Q. And you're relying there on the deposition
8 testimony of former jail administrator Gilberg;
9 correct?

10 A. Correct.

11 Q. Okay. If -- I want you to assume for a
12 second that there were additional facts and those
13 additional facts were somewhat different than the
14 facts you have got here, namely that the TASERS on
15 the units were not retained in a lockbox and that it
16 was routinely carried not as part of a uniform but
17 routinely carried around the unit. If those two
18 facts were true -- and I'm not saying whether they
19 are or aren't. I'm just asking you to assume for a
20 second that they are true. Would that change your
21 opinion about the appropriateness of the use of the
22 TASER within this particular facility?

23 A. No.

24 Q. Why not?

25 A. It just wouldn't.

1 Q. Okay. What facts would change your opinion?
2 What characterization of the use of the TASER would
3 you find inappropriate in a facility such as Chatham
4 County Sheriff's Office?

5 A. The use of the TASER?

6 Q. No.

7 A. You said use. That's why I'm clarifying.

8 Q. I'm asking you about the atmospheric
9 circumstances, how the TASER is stored, where the
10 TASER is stored, who has access to it, whether its
11 training is required in order to be able to touch
12 the TASER, whether or not there are -- you have to
13 make some showing of need for it with a supervisor,
14 these sorts of -- these are the factors that I'm
15 suggesting.

16 Can you identify -- can you describe an
17 atmosphere in which you would find that the -- an
18 atmosphere which was inadequate or created dangerous
19 conditions for detainees that involves a TASER?

20 A. No, I cannot off the top of my head.

21 Q. Okay. In your -- in your opinion, then, if
22 each officer on a unit had a TASER on his or her
23 belt and could deploy that TASER at a moment's
24 notice, that would be fine?

25 A. That would be fine. It happens on the street

1 all the time.

2 Q. Okay. And so that's your opinion in this
3 case based on what you know about Chatham County
4 Sheriff's Office and that detention center, that it
5 would be appropriate for each deputy or corrections
6 officer to be carrying a TASER on the belt and
7 deploy it without any reference to a supervising
8 officer?

9 A. I don't have a problem with it, but they have
10 a much more restrictive policy than that. So my
11 opinion is agreeing -- I have no problems with them
12 carrying handcuffs or any pepper spray and/or TASER,
13 every one of them.

14 Q. Okay. Is there any -- is there any OC spray
15 or pepper spray issue in this case that you've
16 identified?

17 A. No. But I'm just saying in terms of having
18 available resources to me, it's much better to have
19 it when I need it than to wait 30 seconds or ten
20 minutes later when I'm getting the stuff knocked out
21 of me, so...

22 Q. Okay.

23 A. But I find no fault in the policy for what
24 they restricted. My own personal opinion, if I was
25 a sheriff, I would have let everybody, as long as

1 they're trained and follow policy.

2 Q. Okay. You identify on page 28 the last
3 paragraph -- the last full paragraph on the page,
4 "In my opinion, a concern about the application of
5 the TASER did not emerge until further review of the
6 TASER occurred in May of 2015."

7 Do you see that part?

8 A. Yes.

9 Q. Why is it in your opinion that no concern
10 emerged until May of 2015?

11 A. Because that's what the officer -- that's
12 what the sheriff, Gilberg, Smith, Harris all
13 testified to in the collective testimony. They --
14 in response to questions asked of them in their
15 depositions saw no problems prior to this incident,
16 and it only became apparent to them after the
17 incident when they began to investigate more and
18 more cases, and that's after this incident. So up
19 until that incident and from -- let's even go back.
20 As I recall my recollection of reading materials, I
21 started to authorize the use of the TASER in 2001.
22 So 2001 up until this point in time, which is early
23 2015, January, none of the administrators saw any
24 problems with the use of the TASER.

25 Q. Okay. I have two questions about that. One,

1 if the TASER had been -- I think I know the answer
2 based on what you said a minute ago, but I want to
3 confirm.

4 If the TASER had, in fact, been used as much
5 as they discovered that it had been being used in
6 2015 -- the discovery was in May of 2015, but the
7 discovery was of uses of the TASER prior to
8 Mr. Ajibade's death; correct?

9 A. Correct.

10 Q. Okay. If they -- if you had --

11 A. Well, let me --

12 Q. Go ahead.

13 A. And there was some after his death.

14 Q. Fair point. But it's not that there were all
15 of the uses of the TASER that were discovered on
16 May of 2015 were somehow compressed into the week
17 before May of 2015. There was a lag in the
18 discovery of this data; correct?

19 A. A lag in discovery.

20 Q. Yes. So if in November or December of 2014
21 you had been in the facility and been aware of the
22 amount or the frequency of the use of the TASER as
23 later discovered, you wouldn't have had a problem
24 with that?

25 A. No, because it was very, very low. It was

1 like 22 or 23.

2 Q. Right. So it doesn't -- where do you get
3 that 22 or 23 from?

4 A. From the -- from Sheriff Wilcher, Harris and
5 Smith and Gilberg's testimony.

6 Q. Okay. So that wouldn't have been -- that
7 wouldn't have been a problem. And it's -- and is it
8 your opinion in this case that even if those three
9 folks that you just mentioned, Harris, Wilcher and
10 Gilberg -- or Harris, Wilcher, Gilberg and the
11 sheriff --

12 A. Four.

13 Q. Four. It didn't matter that they didn't know
14 about it until May of 2015 because even if they had
15 known about it in November or December or
16 December leading up to it, it would have been fine?

17 MR. PERKINS: Object to form.

18 BY MR. KUHLMAN:

19 Q. Do you understand the question?

20 A. I don't know what they're -- yeah. I'm
21 struggling with it. That's why I'm pausing. I'm
22 not sure what their knowledge was at the time in
23 terms of saying whether it's fine or not.

24 Q. Well, I think that the record suggests they
25 didn't know about it. I think that's --

1 A. I would agree with that.

2 Q. Yes. But I'm asking you to assume that had
3 they known about it. You're saying it wouldn't have
4 been a problem because it was all appropriate?

5 A. Correct.

6 Q. Okay.

7 MR. PERKINS: Object to form.

8 BY MR. KUHLMAN:

9 Q. Do you guys want to go off the record?

10 A. Well, I would like you to clarify that it was
11 all appropriate, the last portion of your statement.

12 BY MR. KUHLMAN:

13 Q. Do you disagree with the sheriff's statement
14 as published in a newspaper article that the TASER
15 was being used too much?

16 A. No, I do not agree with that.

17 Q. Okay. Do you -- so my question, then, was
18 that the -- was -- when I said appropriate, I meant
19 the frequency of the use of the TASER.

20 A. Okay. I would agree with that, the
21 frequency, yes.

22 Q. Was appropriate?

23 A. Yes, sir.

24 Q. Okay. Did you identify in your review of
25 those incidences which came up in the May 15 -- I

1 don't know if you want to call it investigation.

2 The discovery, if you will. Did you have any
3 problems with those individual uses of force
4 incidences, those incidences?

5 A. From reviewing those, there may be one or two
6 in terms of the actual application of the TASER to
7 have to go back and look, but what I had issue of
8 was not reporting the use of the TASER. I think
9 that was the focus of the concern.

10 Q. Can you say that one more time? I'm sorry.

11 A. What I said was I would have to go back and
12 look at those individually, those cases, but my
13 general impression was that there were several
14 cases. The use may have been appropriate, going to
15 your question, but what I found more concerning, as
16 well as the investigators, was not reporting the use
17 of the TASER.

18 Q. Because --

19 A. Failing to report.

20 Q. Because, again, on this theme that we have
21 been discussing all day, the supervisor's ability to
22 make policy or to implement policy is only as good
23 as their ability to understand what they -- the data
24 that they have received. If they don't receive the
25 data, they can't effectively supervise; correct?

1 A. Well, I wouldn't -- no, I don't agree with --
2 you can supervise people well without data. What
3 I'm saying is you can't supervise people who
4 blatantly disregard policy and you don't know about
5 it until later down the road. That's what's
6 problematic.

7 Q. Right. So in this example, the data that I
8 was referring to would have been the evidence of the
9 instances in which folks were blatantly disregarding
10 policy. So if you don't have that knowledge, you
11 can't address it because you don't know about it.

12 A. Right.

13 Q. Okay. This, as we get into the evening here,
14 this is --

15 MR. KUHLMAN: Mark this as 13.

16 - - -

17 (Exhibit 13, Article titled "Examining Kingsley
18 v Hendrickson: Ending the Twilight Zone," was marked
19 for identification.)

20 - - -

21 BY MR. KUHLMAN:

22 Q. We have been talking -- we referenced this
23 article a couple of times, I think. This is "titled
24 Kingsley vs Hendrickson: Ending the Twilight Zone."
25 Is this the copy, to the best of your knowledge, of

1 the article that you wrote and have referred --
2 referenced in your opinions here today and in your
3 report?

4 A. It appears to be, yes.

5 - - -

6 (Exhibit P-88, Uses of TASERs on Restrained
7 Detainees Spreadsheet, was previously marked for
8 identification.)

9 - - -

10 BY MR. KUHLMAN:

11 Q. Okay. I'm going to show you what what's been
12 premarked as P-88.

13 A. Did you want me to do something with that
14 article?

15 Q. I don't. We have talked about it before. I
16 would like to have a copy attached to the record.
17 So I just want to make sure we have a true and
18 accurate copy of it.

19 This is P-88. This is -- the title, "Uses of
20 TASERs on Restrained Detainees." Forgive me. It's
21 a spreadsheet that seems to be printed which never
22 seems to go well, but looking over this document,
23 can you tell me whether or not you relied on or
24 reviewed this document in reaching the opinions that
25 you express in your report and have discussed today?

1 A. I reviewed it.

2 Q. Okay. Did it inform your opinions?

3 A. No.

4 Q. Why not?

5 A. Because all I have is dates with officers'
6 names, with inmates' names, with a field about
7 restraint device inmate, injury. There's no
8 content. There's no correlation to a report,
9 incident, investigation, circumstance, situation, et
10 cetera, et cetera.

11 Q. Okay. I think you --

12 A. It's just a listing, like an Excel sheet.

13 Q. Is this -- is this the spreadsheet or the
14 report that you refer to in your report as having to
15 be -- I think you characterized it as having
16 withdrawn, been withdrawn?

17 A. What page?

18 Q. Well, just bear with me a second. I
19 apologize.

20 On page 29 referring to the testimony of
21 former jail administrator Gilberg in the middle of
22 that --

23 A. Sure. I see it.

24 Q. The report had to be retracted. Do you know
25 what report he's referring to?

1 A. I think the Post story or investigation that
2 was contained in the IA because there was confusion
3 about what this really meant at first blush it
4 appeared that we had roughly whatever the number is,
5 roughly 600 --

6 MR. PERKINS: You're referring to P-88?

7 THE WITNESS: P-88, yes.

8 MR. PERKINS: Go ahead.

9 THE WITNESS: And that, holy crap, 600. You
10 know, it was astonishing for them that, no, a
11 TASER was just there, not deployed. That's what
12 became retracted and gave a different account and
13 version of what actually occurred.

14 BY MR. KUHLMAN:

15 Q. Okay. The Washington Post, as far as you
16 know, hasn't issued a retraction of the statements
17 of the sheriff that it published?

18 A. I have no idea.

19 Q. Okay. But I am just clearing up you said
20 earlier you thought it might have been The
21 Washington Post retracted. Is this the document
22 that was retracted?

23 A. I have idea.

24 Q. Okay.

25 A. This is not a report. This is just a listing

1 of instances.

2 Q. I understand that. Did you review the
3 testimony of now Sheriff Wilcher who's the nominal
4 defendant in this case?

5 A. Yes, sir.

6 Q. Okay. And you write in your report that he
7 testified that -- I'm on page 30 here -- the bottom
8 of that paragraph right before you got the heading
9 that says "Opinion."

10 A. Correct.

11 Q. You say that, "There will always be an
12 alleged wrongful death in the jail as long as you
13 have inmates in there." That's -- that's just you
14 summarizing the testimony of Sheriff Wilcher;
15 correct?

16 A. That's his statement, and I referenced the
17 pages where it came from. I would have to go back
18 and look at the specific page, but that's what he
19 stated in his response to a question.

20 Q. Right. Did you -- did you -- do you recall
21 from that -- from that -- your review of that
22 transcript that there was an exhibit that was being
23 asked about in the context of this wrongful death
24 characterization?

25 A. That there was an exhibit?

1 Q. Yeah. That --

2 A. Not that I recall.

3 Q. Okay. Would you like -- would you like to
4 look at a copy of Sheriff Wilcher's deposition to --
5 or do you want me to just --

6 A. Whatever you want me to do.

7 MR. KUHLMAN: Ben, do you have a copy there
8 handy?

9 MR. PERKINS: Of what?

10 MR. KUHLMAN: Wilcher's transcript.

11 MR. PERKINS: No.

12 MR. KUHLMAN: Okay.

13 BY MR. KUHLMAN:

14 Q. Are you aware that Sheriff Wilcher sought or
15 ran for office in the midst of this case?

16 A. In the midst of this case? I'm not sure when
17 he ran for office.

18 Q. Sheriff Wilcher ran for office at some time
19 after Mathew Ajibade had passed away but prior to
20 today.

21 A. Okay.

22 Q. Can you agree with that much?

23 A. I'm taking your word for it.

24 Q. Okay. So you don't -- you don't recall
25 reading about statements that Sheriff Wilcher -- in

1 his transcript you don't recall reading those
2 portions of his transcript where he described --
3 where there were questions about campaign materials
4 and statements he made during the campaign about the
5 way that the jail had been managed?

6 A. No.

7 Q. Okay. Do you recall reviewing a management
8 audit that was conducted of the facility prior to
9 Mr. Ajibade's death?

10 A. No.

11 Q. Okay. So that -- if there was -- if --
12 assume with me for a second that there was a
13 management audit which found disagreement among
14 folks at the sort of the administrative level just
15 underneath the sheriff and which created a
16 disruptive environment within the facility. If that
17 was, in fact, true, would it -- would those be some
18 of the circumstances that we -- and I'm going all
19 the way back to the beginning of today where we
20 talked about how we have a break between policies at
21 the management level and getting to the
22 supervisor -- and, excuse me, getting to the line
23 officers, and we talked about this breakdown between
24 the top and the bottom. Do you recall that --

25 A. I have no idea what you're talking about.

1 Q. Okay. I feared you might.

2 If there was -- if there was a chaotic
3 management problem at the Chatham County detention
4 center in the months prior to Mr. Ajibade's death,
5 would those facts in any way change your opinion --
6 the opinions that you express today?

7 A. Absolutely not.

8 Q. Okay. Do you know if there is a
9 statistically significant average number of
10 appropriate uses of TASER in sort of the national
11 data? You did some math in your report about --

12 A. Yes.

13 Q. -- 20 times is okay or however many -- you
14 know, you did some math; right?

15 A. Based on estimates that came from the
16 deposition testimony.

17 Q. I understand that. I'm asking you whether or
18 not there's -- you can point to some national
19 standards that compare to this, to the data that you
20 have in front of you here.

21 A. Not in corrections there's not.

22 Q. Okay. In law -- outside -- in law
23 enforcement is there data?

24 A. Axon keeps it.

25 Q. I'm sorry?

1 A. Axon, TASER International has all of that
2 data.

3 Q. On the number of deployments?

4 A. Absolutely.

5 Q. Okay. They just don't report it for
6 corrections environment or --

7 A. Well, you would have to go through and -- I
8 don't think there's -- that I have not seen. I have
9 not seen one that's, you know, separated out. These
10 are all street law enforcement and corrections, but
11 they keep all track of -- they have a system where
12 they keep track of all trigger pulls and all uses
13 and applications of TASER that they have sold.

14 Q. Okay. Are you aware of anybody in the
15 literature or anybody in the academy that has
16 evaluated that data or done any analysis of TASER
17 data?

18 A. Not that I'm aware of. It would only be
19 published articles that looked at several
20 departments and not every department in the whole
21 United States that used TASER.

22 Q. Okay. Are you aware of warnings issued by
23 TASER International itself about the risks
24 associated with the use of its own devices?

25 A. Yes.

1 Q. Okay. How do those warnings comport with the
2 conclusions in your report that TASER is largely
3 safe?

4 A. I think they comport well.

5 Q. Okay. Did you compare the -- we have talked
6 about the adequacy of the policies at the Chatham
7 County Sheriff's Office; correct?

8 A. Yes, sir.

9 Q. Did you do any comparison of those policies
10 to -- you refer to the Georgia standards, correct,
11 in your report?

12 A. Correct.

13 Q. Okay. Is there any sort of national
14 standards to which you would refer or is it a state
15 specific?

16 A. State specific.

17 Q. Okay. And so those are the -- who is the
18 promulgating body for those state-specific
19 standards?

20 A. The Georgia jail and adult detention centers.

21 Q. Okay. Is that an accrediting body?

22 A. No, not that I know of. Not that I'm aware
23 of.

24 MR. KUHLMAN: Okay. I am very close to being
25 finished. If you will bear with me for just a

1 minute.

2 MR. PERKINS: Take your time.

3 MR. KUHLMAN: I will --

4 MR. PERKINS: I did check. You have a little
5 more time. I think they close at 5:30. So I hate
6 to tell you that, but I need to be up front with
7 you as well since I asked.

8 MR. KUHLMAN: I appreciate it. Thank you.

9 MR. PERKINS: You're welcome.

10 (Discussion off the record.)

11 - - -

12 (Exhibit 14, 1/09/15 Memo Regarding TASER
13 Usage, was marked for identification.)

14 - - -

15 BY MR. KUHLMAN:

16 Q. Dr. Ross, I'm going to show you what we're
17 going to mark here as Ross 14. This is an
18 interoffice correspondence dated January 9, 2015.
19 Do you recognize this memo?

20 A. I read it, yes, sir.

21 Q. Okay. Did this memo in any way inform the
22 opinions that you formed in this case?

23 A. Let's put it this way: When you say
24 "informed," it helped clarify testimony in the
25 depositions.

1 Q. How did it help clarify testimony in the
2 depositions?

3 A. Because they kept referring to a memo, and I
4 didn't know where that memo was until, I don't know,
5 later on. Somewhere I received a copy of this.

6 Q. Okay.

7 A. So like many depositions, when you don't have
8 all the exhibits of a particular individual's dep
9 and they refer to a memo, Exhibit 2 or a schematic
10 or a photo and you don't have it, it's like, okay,
11 that's good. Everybody in the room knows about it,
12 but somebody's trying to read the record and has no
13 clue.

14 Q. Are there any other transcripts that come to
15 mind right now that refer to documents which you
16 weren't able to --

17 A. Not at this point.

18 Q. -- get to?

19 A. No.

20 Q. Do you -- there's some kind of all caps
21 language here in the middle of the memo.

22 A. I see.

23 Q. Okay. It says -- and then, I'm sorry, before
24 we talk about that, if you'll turn the page, there's
25 a second memo, interoffice correspondence that says,

1 "This memo supersedes prior memo dated January 9."

2 Do you recall reviewing this memo?

3 A. I think so. I believe so.

4 Q. Okay. So --

5 A. But I don't recall the third page that's
6 connected to it. I don't recall seeing that. Now,
7 you might -- with everything I reviewed, I just
8 don't recall that particular third sheet, but I do
9 recall these first two.

10 Q. Can you tell me whether it's appropriate to
11 drive stun a detainee in full restraints?

12 A. According to this memo or --

13 Q. No. According to your experience and
14 training.

15 A. Oh, I think it's allowable, yes. It's
16 authorized.

17 Q. So why --

18 A. Depending on their behaviors.

19 Q. What behaviors would merit the drive stunning
20 of a detainee in full restraints?

21 A. If they're head-butting you, if they're
22 trying to bite you.

23 Q. How would a detainee in full restraints be
24 able to bite --

25 A. Would you like me to show you?

1 Q. This is --

2 MR. PERKINS: When you say full restraints?

3 What do you mean?

4 MR. KUHLMAN: Well --

5 MR. PERKINS: In a chair or what?

6 MR. KUHLMAN: Let's ask Dr. Ross to unpack
7 it.

8 BY MR. KUHLMAN:

9 Q. What do you mean when -- what do you hear --
10 referring back to our sort of --

11 A. Yeah. Well, you're answering it and showing
12 me Exhibit 14 in full restraints. So full
13 restraints -- let's put it in -- we can put it in a
14 couple ways. I already said I disagreed with the
15 memo about full restraints. Chatham County has
16 determined for their own practice to restrict that,
17 which that's fine. I have a different philosophy
18 about it. So my understanding of full restraints is
19 what they're saying here is someone who is
20 controlled and restrained, hands behind their back
21 and legs shackled; correct?

22 Q. Where do you see -- where are you reading
23 from?

24 A. Well, that's what I'm learning from reading
25 from all the testimony. That's how they define it.

1 That's how Officer Gilberg, jail administrator,
2 former jail administrator defined full restraints in
3 his testimony.

4 Q. Right. So I'm looking at -- I'm looking at
5 the third page here where they have written that,
6 "Full restraints mean a detainee's hands and feet
7 are being restrained and restricted."

8 A. That's what I just said. Yeah. I would
9 agree with that.

10 Q. All right. So that could be with handcuffs
11 and leg irons?

12 A. Could be.

13 Q. Okay.

14 A. That's how I understand. That's my
15 impression. So that doesn't mean that the detainee
16 doesn't have other personal weapons at his disposal
17 to use.

18 Q. Okay. What --

19 A. I have seen actually kicks with full
20 restraints on.

21 Q. Okay. Is it --

22 A. I have seen detainees try to bite and
23 actually bite officers, because you have to be in
24 and around them and in close proximity. So there's
25 nothing restricting the head. The head is not

1 secured, and so that's possible. And I have seen it
2 actually possible. So, yeah. My philosophy, yeah,
3 a drive stun could be permitted in those situations.

4 Q. Okay. I have just got one last series of
5 questions here. For you and I think we're -- we are
6 going to be -- did you -- did you have any evidence
7 that you reviewed in the record that would -- I'm
8 showing today -- the policy -- the TASER policy
9 changed prior to these -- between the effective date
10 of the policy that you reviewed and these memos in
11 January and February of '15?

12 MR. PERKINS: Object to form.

13 THE WITNESS: Did I see a change in the
14 policy? No. I didn't get a policy that was
15 changed.

16 BY MR. KUHLMAN:

17 Q. Okay. Earlier you told us about the case --
18 the one case involved officers hogtying a detainee
19 or an arrestee using battery cables; right?

20 A. That's correct. Jumper cables.

21 Q. Jumper cables. Excuse me.

22 And in that case you also said that that was
23 a case where you found that the officers had lied;
24 correct?

25 A. Yes, sir.

1 Q. And that you identified as a problem;
2 correct?

3 A. Correct.

4 Q. And lying isn't -- isn't appropriate or
5 helpful in that environment; right?

6 A. Absolutely.

7 Q. All right. So the sheriff -- let's talk
8 about CCDC, for example. The sheriff can't be
9 everywhere; correct?

10 A. Correct.

11 Q. All right. But, yet, he's ultimately
12 responsible for -- he or she is ultimately
13 responsible for what goes on inside his facility;
14 right?

15 A. Well, that's debatable on that, but
16 generally, as long as we have got good direction.

17 Q. Okay.

18 A. So, I mean, I could go down a long path, but
19 generally --

20 MR. PERKINS: Object to form to the extent it
21 calls for speculation.

22 MR. KUHLMAN: Thank you.

23 THE WITNESS: Yeah. That's --

24 BY MR. KUHLMAN:

25 Q. But because he can't be everywhere and yet he

1 bears at least some responsibility for what goes on
2 in his or her facility, he implements policies, as
3 we have talked about before; right?

4 A. Yes, sir.

5 Q. And that policy is enforced through training?

6 A. Correct.

7 Q. And supervision?

8 A. Correct.

9 Q. And discipline?

10 A. Correct.

11 Q. Okay. Now --

12 A. And officers adhering to the policy and being
13 accountable.

14 Q. Right. And he's got to know -- he's got to
15 know whether or not the officers are adhering to the
16 policy in order to know whether or not they need
17 additional training or additional discipline?

18 A. That's true.

19 Q. Okay. He can't effectively manage the
20 facility or the agency if he doesn't know what's
21 going on inside his own facility; correct?

22 A. Correct.

23 MR. PERKINS: Object to form.

24 BY MR. KUHLMAN:

25 Q. All right. In other words, just like you

1 writing your articles as an academic or as a
2 professor, you have got to have good data in order
3 to have good conclusions, the sheriff has to have
4 good data in order to develop and implement
5 effective policies; correct?

6 A. Well, those are not mutually exclusive, and
7 those are two apples and oranges, and that's not
8 even associated. I disagree with that.

9 Q. That it's -- that it's not a fair parallel to
10 say --

11 A. I agree with that. That's not a fair
12 parallel.

13 Q. Okay. Is the inputs and outputs -- strike
14 that.

15 If the sheriff isn't aware that deputies are
16 disregarding his written policy, then he can't
17 effectively change the policy or change the training
18 program; correct?

19 A. I disagree. But generally I would agree with
20 that, but there are parts that I disagree.

21 Q. Well, if he didn't know about it, then he
22 wouldn't -- then assume for a second that he didn't
23 know that things were happening or that the policies
24 weren't being adhered to. There would be no reason
25 to change the policy; correct?

1 A. No. That's not -- I do disagree with that.
2 I said, no, I don't agree with that.

3 Q. What would be the reason to change the policy
4 if, from the sheriff's perspective, everything is as
5 it should be?

6 A. A change in the law. The Supreme Court comes
7 down with a case, just like you handed me my article
8 on Kingsley there, that should necessitate a policy.
9 If you're going to change a practice, that should
10 change a policy. If we're going to get -- advent
11 new technology in the department, use a new device,
12 that should change policy. So there's a lot of
13 things. It's not just, as you're trying to lead me
14 down this path, of inappropriate behavior. There's
15 all sorts of things that change policies.

16 Q. I appreciate your anticipation of where we
17 might or might not be going, but let me just use a
18 little spatial model for just a second here to try
19 to move this along so we can all go home.

20 Those things -- the changes in the law that
21 you just described, let's say those come from the
22 top down to the sheriff and he's got to make changes
23 based on what he gets from that direction. Okay?
24 That doesn't have anything to do with whether or not
25 the line officers are effectively adhering to the

1 policy; correct?

2 A. No. It will be. It will ultimately, because
3 the law changes performance. One day I can not do a
4 strip search and the Supreme Court says, "Thou shalt
5 do a strip search." So that's going to change how
6 you do -- a corrections officer does on his
7 day-to-day job. Absolutely.

8 Q. Okay. But the sheriff -- again, just to
9 reiterate, the sheriff needs to know what's going on
10 with the line officers; correct?

11 A. I would agree with that, and he gets
12 information from his supervisors.

13 Q. Correct. Thank you.

14 If an officer doesn't report an incident to a
15 supervisor, then it's reasonable to expect that that
16 incident, that knowledge is not going to then in
17 turn get to the sheriff; correct?

18 A. Exactly.

19 Q. Right. So if the sheriff -- and then the
20 supervisors also don't know what's going on because
21 they're not hearing about it from the line officers;
22 right? Correct?

23 A. Correct, for an officer.

24 Q. Okay. And, therefore, if the officers -- if
25 officers lie, as they did in one of the two cases

1 you found in your entire career where there was
2 wrongdoing, that's going to interfere with the
3 supervisor's ability to get accurate data; correct?

4 A. Now you're saying data. You're mixing data
5 with supervisory responsibilities.

6 Q. Okay.

7 A. You can run in any organization without --
8 police organization really without data. It's been
9 done many, many years. When I think of data, I
10 think what you're -- if I'm understanding your
11 question, tracking incidents, recording the
12 percentage and number of times that we use a
13 particular technique -- I know a lot of departments
14 right now that don't collect data, and they run
15 their organization very efficiently. So when you
16 say data, I would disagree with that.

17 Q. Okay. But if it's the responsibility of the
18 supervisor to report what the supervisor learns from
19 the line officers to the sheriff --

20 A. Information I would say.

21 Q. Information, okay. If the line officers give
22 the supervisor wrong information, if the line
23 officers lie to the supervisor, then the supervisor
24 is not going to give correct information to the
25 sheriff; correct?

1 A. Yeah. That's logical. Yeah.

2 Q. Thank you.

3 A. Yes.

4 Q. And that breakdown is going to interfere with
5 the sheriff's ability to set effective policies.

6 A. Not necessarily, no.

7 Q. Does it cloud the sheriff's views in his own
8 facility?

9 A. I don't think so.

10 Q. The sheriff getting misinformation from the
11 line level up doesn't cloud his view of the way
12 things are in his facility?

13 A. Now you're saying misinformation. You said
14 no information.

15 Q. I meant to say -- we're working from this --
16 these lies that are being told at the line level.
17 So that means the misinformation gets communicated
18 to the supervisors who then in turn pass it to the
19 sheriff.

20 A. There's nothing he can do about it until he
21 learns the real truth of something.

22 Q. Right. Again, his ability to do anything,
23 the sheriff, I mean, is predicated on his ability to
24 receive truthful information; correct?

25 A. No. He can still do his job, but it would

1 certainly help if he has reliable information.

2 Q. Okay. He can effectively work with
3 misinformation -- the misinformation is not going to
4 interfere with his ability to effectively do his
5 job?

6 A. It depends on -- I see sheriffs all the time
7 function in a very efficient manner, but when they
8 have -- even though they may not have full
9 information, once they get full information, then,
10 yeah, it's incumbent upon them to investigate and
11 then let's get the true information so that we
12 can -- if there are changes that have to be made, we
13 would direct that. We would approach that. He
14 would change that. He would or she would, as the
15 case may be.

16 Q. Okay. But, again, there's -- your review of
17 this -- of the facts that you have got, the facts
18 that you reviewed in order to form the opinions that
19 you have in this case, nowhere in that -- in that
20 data set -- is it fair to call that a data set, the
21 things that you relied on to form your opinions?

22 A. I didn't look at data-generated numbers.
23 There was nothing that was produced in any of these
24 documents that generated numbers other than what was
25 estimated in deposition testimony by Gilberg,

1 Wilcher, Harris and Smith. And based on their
2 estimates, that's the only numbers I actually
3 assessed.

4 So if you're asking me did I have some type
5 of evidence or document that gave me numbers dating
6 back longitudinally, I didn't see any of that.

7 Q. Okay. But there's a set of information.
8 Your reliance materials, right, that you used to
9 formulate your opinions?

10 A. Correct.

11 Q. Okay. Within the reliance materials, which
12 we have said several times today is about 5,000
13 pages and some videos, do you recall whether or not
14 there was evidence within those materials of
15 officers lying to their -- line officers lying to
16 supervisors as similar to the one case you
17 identified earlier today where you found a problem
18 with the officers?

19 A. I saw two.

20 Q. One of the two cases?

21 A. Two cases.

22 Q. Yes.

23 A. Of lying.

24 Q. There was lying -- excuse me. There was
25 lying in both of -- in the two cases where you found

1 a problem in your entire career?

2 A. You said in what I read in this case. I
3 found two cases in this 5,000 pieces of evidence
4 that you asked --

5 Q. Okay.

6 A. -- did I find any evidence of cases where
7 people were lying.

8 Q. Yes.

9 A. And I saw two.

10 Q. Okay. And how is the lying that is in this
11 case different than the lying that you identified in
12 the hogtying with the jumper cables case?

13 A. Lying is lying. There was no difference.

14 MR. KUHLMAN: Thank you. Those are all the
15 questions I have for you at this time.

16 MR. PERKINS: Eric, have you got any
17 questions?

18 MR. FRISCH: No, I do not. Thank you.

19 MR. PERKINS: All right. I have no
20 questions. Thank you, everybody. Have a good
21 evening. Oh, reading and signing.

22 MR. KUHLMAN: Can we agree that he'll remain
23 under oath until he reads and signs? Would you
24 like to read and sign?

25 THE WITNESS: Yes.

1 MR. KUHLMAN: It will save you the trouble of
2 notarizing something.

3 THE COURT REPORTER: Do you need this typed
4 up regular?

5 MR. KUHLMAN: Yes, that's fine.

6 THE COURT REPORTER: Would you like a copy?

7 MR. PERKINS: Yes. I need a ptx and a PDF of
8 the exhibits.

9 (Whereupon, the deposition concluded at
10 5:12 p.m.)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T E

I, Tami Cline, Registered Merit Reporter,
Certified Realtime Reporter, and Florida
Professional Reporter, do hereby certify that,
pursuant to notice, the deposition of DARRELL ROSS,
PhD was duly taken on November 8, 2011, at 9:53 a.m.
before me.

The said DARRELL ROSS, PhD was duly sworn by
me according to law to tell the truth, the whole
truth and nothing but the truth and thereupon did
testify as set forth in the above transcript of
testimony. The testimony was taken down
stenographically by me. I do further certify that
the above deposition is full, complete, and a true
record of all the testimony given by the said
witness.

Tami Cline, RMR, CRR, FPR

(The foregoing certification of this
transcript does not apply to any reproduction of the
same by any means, unless under the direct control
and/or supervision of the certifying reporter.)

INSTRUCTIONS TO WITNESS

Please read your deposition over carefully and make any necessary corrections. You should state the reason in the appropriate space on the errata sheet for any corrections that are made.

After doing so, please sign the errata sheet and date it. It will be attached to your deposition.

It is imperative that you return the original errata sheet to the deposing attorney within thirty (30) days of receipt of the deposition transcript by you. If you fail to do so, the deposition transcript may be deemed to be accurate and may be used in court.

1 - - - - -

2 E R R A T A

3 - - - - -

4 PAGE LINE CHANGE

5 _____

6 REASON: _____

7 _____

8 REASON: _____

9 _____

10 REASON: _____

11 _____

12 REASON: _____

13 _____

14 REASON: _____

15 _____

16 REASON: _____

17 _____

18 REASON: _____

19 _____

20 REASON: _____

21 _____

22 REASON: _____

23 _____

24 REASON: _____

25

ACKNOWLEDGMENT OF DEPONENT

I, _____, do hereby
acknowledge that I have read the foregoing pages, 1
to 271, and that the same is a correct transcription
of the answers given by me to the questions therein
propounded, except for the corrections or changes in
form or substance, if any, noted in the attached
Errata Sheet.

DARRELL ROSS, PhD

DATE

Subscribed and sworn to before me this
____ day of _____, 20____.

My Commission expires: _____

Notary Public

1	LAWYER'S NOTES		
2	PAGE	LINE	
3	_____	_____	_____
4	_____	_____	_____
5	_____	_____	_____
6	_____	_____	_____
7	_____	_____	_____
8	_____	_____	_____
9	_____	_____	_____
10	_____	_____	_____
11	_____	_____	_____
12	_____	_____	_____
13	_____	_____	_____
14	_____	_____	_____
15	_____	_____	_____
16	_____	_____	_____
17	_____	_____	_____
18	_____	_____	_____
19	_____	_____	_____
20	_____	_____	_____
21	_____	_____	_____
22	_____	_____	_____
23	_____	_____	_____
24	_____	_____	_____
25			